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Do not notice for BK case:
Message-Id:<33947536@wawb.uscourts.gov>
Subject:Hoover v. Quality Loan Service Corporation of Washington et 20-04002-MJH Notice of Transmittal of Appeal to BAP
/USDC Content-Type: text/html

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30-page limit do not apply.

U.S. Bankruptcy Court Western District of Washington

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Notice of Electronic Filing

The following transaction was received from Manley, Sherri entered on 3/3/2021 at 3:03 PM PST and filed on 3/3/2021

Case Name: Hoover v. Quality Loan Service Corporation of Washington et

Case Number: **20-04002-MJH**

Docket Text: Notice of Transmittal of Motion for Leave to Appeal, Related Response and Notice of Appeal to USDC. A Notice of Appeal has been filed by Emilie K Edling with the Clerk of the U.S. Bankruptcy Court. The U.S. Bankruptcy Court has assigned an internal appeal number of 21-T003. Any further documents related to the appeal must include this internal number. Refer to Fed. R. Bankr. P. 8006 and LBR 8006-1; Fed. R. Bankr. P. 8009(b)(1) through (8). Transcript requests should be directed to one of the Approved Transcription Agencies posted on the court website at www.wawb.uscourts.gov. Note: a cross-appeal has its own fee and will receive its own internal case number. (SLM)

Document Number: 93

The above document(s) are associated with this transaction:

20-04002-MJH Notice will be electronically mailed to:

Jason D Anderson on behalf of Plaintiff Sarah Hoover
jason@alkc.net

Emilie K Edling on behalf of Defendant HSBC Bank USA, NA
eedling@houser-law.com, rperez@houser-law.com

Christina L Henry on behalf of Plaintiff Sarah Hoover
chenry@hdm-legal.com, HenryDeGraaffPS@jubileebk.net;mainline@hdm-legal.com;igotnotices@henrydegraaff.com

John Anthony McIntosh on behalf of Defendant IH6 Property Washington LP
johnm@schweetlaw.com

Joseph W McIntosh on behalf of Defendant Quality Loan Service Corporation of Washington
jmcmintosh@McCarthyHolthus.com, wbabs@mcCarthyholthus.com

Robert W Norman on behalf of Defendant HSBC Bank USA, NA
rnorman@houser-law.com, rperez@houser-law.com

20-04002-MJH Notice will not be electronically mailed to:

APLDIST, APPEAL, ChamNote

**U.S. Bankruptcy Court
Western District of Washington (Tacoma)
Adversary Proceeding #: 20-04002-MJH**

Assigned to: Mary Jo Heston

Date Filed: 01/25/20

Lead BK Case: 19-42890

Lead BK Title: Sarah Hoover

Lead BK Chapter: 13

Demand:

Nature[s] of Suit: 14 Recovery of money/property –
other

Plaintiff

Sarah Hoover

SSN / ITIN: xxx-xx-8882

represented by **Jason D Anderson**

Anderson Law of King County, PLLC
787 Maynard Ave S
Suite B
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Fax : 206-395-2719
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LEAD ATTORNEY

Christina L Henry

Henry & Degraaff, P.S.
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206-330-0595
Fax : 206-400-7609
Email: cherry@hdm-legal.com
LEAD ATTORNEY

V.

Defendant

**Quality Loan Service Corporation of
Washington**

represented by **Joseph W McIntosh**

McCarthy & Holthus, LLP
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(206) 319-9049
Fax : (206) 780-6862
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Defendant

**PHH Mortgage Corporation
dba PHH Mortgage Services**

represented by **Emilie K Edling**

Houser & Allison, APC

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503-914-1382
Email: eedling@houser-law.com

Ryan S Moore
DOJ-Ust
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Email: ryan.moore@usdoj.gov
TERMINATED: 10/30/2020

Robert W Norman
9970 Research Drive
Irvine, CA 92618
949-679-1111
Email: rnorman@houser-law.com

Defendant

**HSBC Bank USA, NA, as Trustee of the
Fieldstone Mortgage Investment Trust, Series
2006-2**

represented by **Emilie K Edling**
(See above for address)

Ryan S Moore
(See above for address)
TERMINATED: 10/30/2020

Robert W Norman
(See above for address)

Defendant

NewRez, LLC

represented by **Emilie K Edling**
(See above for address)

Ryan S Moore
(See above for address)
TERMINATED: 10/30/2020

Robert W Norman
(See above for address)

Defendant

**IH6 Property Washington LP
dba Invitation Homes**

represented by **Emilie K Edling**
(See above for address)

John Anthony McIntosh
Schweet Linde & Coulson
575 S Michigan Street
Seattle, WA 98108
206-381-0118
Email: johnm@schweetlaw.com

Filing Date	#	Docket Text
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01/25/2020		<u>1</u>	Adversary case 20-04002. Complaint by Sarah Hoover (attorneys Christina L Henry, Jason D Anderson, Christina L Henry) against Quality Loan Services of Washington (attorneys Robert William McDonald, Lance Olsen), PHH Mortgage Corporation, New Rez, LLC, HSBC Bank USA NA, IH6 Property Washington, LP (attorneys John A. McIntosh, Thomas S Linde). . (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H) Nature of Suit: (14 (Recovery of money/property – other)) (Henry, Christina) (Entered: 01/25/2020 at 16:59:04)
01/27/2020		<u>2</u>	Summons issued to Plaintiff's Attorney for Service on HSBC Bank USA NA Answer Due 2/26/2020; IH6 Property Washington, LP Answer Due 2/26/2020; New Rez, LLC Answer Due 2/26/2020; PHH Mortgage Corporation Answer Due 2/26/2020; Quality Loan Services of Washington Answer Due 2/26/2020 . (TGR) (Entered: 01/27/2020 at 10:34:08)
01/27/2020			Receipt of Adversary Filing Fee – \$0.00 by PB. Receipt Number 469757. Hoover (admin) (Entered: 01/28/2020 at 07:21:39)
01/30/2020		<u>3</u>	Notice of Appearance . Filed by Joseph W McIntosh of McCarthy & Holthus, LLP on behalf of Qualilty Loan Service Corporation of Washington. (McIntosh, Joseph) (Entered: 01/30/2020 at 13:26:24)
02/02/2020		<u>4</u>	Proof of Service . Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) <u>1</u> Complaint, <u>2</u> Summons and Pretrial Conference). (Henry, Christina) (Entered: 02/02/2020 at 21:53:16)
02/04/2020		<u>5</u>	Amend Complaint. <i>Defendant not added.</i> Defendants not added. Amending: <i>Amended to correct name of PHH Mortgage Corporation.</i> (Related document(s) <u>1</u> Complaint)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Henry, Christina) (Entered: 02/04/2020 at 13:17:13)
02/04/2020		<u>6</u>	Withdrawal of Document. Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) <u>5</u> Amend Complaint). (Henry, Christina) (Entered: 02/04/2020 at 13:26:21)
02/04/2020		<u>7</u>	Amend Complaint. <i>Defendant not added.</i> Defendants not added. Amending: <i>Amended to correct name of defendant PHH Mortgage Corporation d/b/a PHH Mortgage Services and to update addresses of defendants..</i> (Related document(s) <u>1</u> Complaint)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H) (Henry, Christina) (Entered: 02/04/2020 at 13:39:38)
02/05/2020		<u>8</u>	REISSUED Summons to Plaintiff's Attorney for Service on PHH Mortgage Corporation . (TGR) (Entered: 02/05/2020 at 11:44:29)
02/12/2020		<u>9</u>	Letter To and Subject: <i>re Reissuance of Summons</i> (Related document(s) <u>7</u> Amend Complaint). Filed by Christina L Henry on behalf of Sarah Hoover. (Henry, Christina) (Entered: 02/12/2020 at 09:44:19)
02/12/2020		<u>10</u>	Summons Reissued to Plaintiff's Attorney Christina Henry for Service on IH6 Property Washington LP, Answer Due 3/13/2020; NewRez, LLC, Answer Due 3/13/2020. (SLM) (Entered: 02/12/2020 at 12:52:27)
02/12/2020		<u>11</u>	

			Proof of Service . Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) 7 Amended Complaint, 10 Reissued Summons) (Henry, Christina) <i>Modified on 2/13/2020</i> . (SLM) (Entered: 02/12/2020 at 19:14:08)
02/20/2020		12	Notice of Appearance . Filed by Ryan S Moore on behalf of HSBC Bank USA, NA, PHH Mortgage Corporation. (Moore, Ryan) (Entered: 02/20/2020 at 10:36:49)
02/24/2020		13	Motion for Summary Judgment with Notice of Hearing. Filed by Joseph W McIntosh on behalf of Quality Loan Service Corporation of Washington The Hearing date is set for 3/24/2020 at 01:00 PM at Judge Heston's Courtroom H, Union Station. Response due by 3/17/2020. (McIntosh, Joseph) (Entered: 02/24/2020 at 10:14:33)
02/25/2020		14	Answer to Complaint (Related document(s) 7 Amend Complaint). Filed by Joseph W McIntosh of McCarthy & Holthus, LLP on behalf of Quality Loan Service Corporation of Washington. (McIntosh, Joseph) (Entered: 02/25/2020 at 16:31:03)
02/25/2020		15	Stipulated Statement <i>Deposit of Surplus Funds...</i> Filed by Joseph W McIntosh of McCarthy & Holthus, LLP on behalf of Quality Loan Service Corporation of Washington. (McIntosh, Joseph) (Entered: 02/25/2020 at 16:36:29)
02/28/2020		16	Notice of Appearance . Filed by John Anthony McIntosh of Schweet Linde & Coulson on behalf of IH6 Property Washington LP. (McIntosh, John) (Entered: 02/28/2020 at 16:08:35)
02/28/2020		17	Answer to Complaint (Related document(s) 7 Amend Complaint). Filed by John Anthony McIntosh of Schweet Linde & Coulson on behalf of IH6 Property Washington LP. (McIntosh, John) (Entered: 02/28/2020 at 16:11:32)
03/03/2020		18	ORDER Consolidating Actions and Setting Status Conference. The Status Conference is set for 3/13/2020 at 09:00 AM at Judge Heston's Courtroom H, Union Station, 1717 Pacific Ave, Courtroom H, Tacoma, WA. (SLM) (Entered: 03/03/2020 at 17:01:46)
03/09/2020		19	Letter From Attorney to Judge: <i>Permission to Appear Telephonically</i> . Filed by Joseph W McIntosh on behalf of Quality Loan Service Corporation of Washington. (Related document(s) 18 Scheduling Order). (McIntosh, Joseph) (Entered: 03/09/2020 at 13:18:51)
03/11/2020		20	Answer to Complaint (Related document(s) 7 Amend Complaint). Filed by Ryan S Moore on behalf of HSBC Bank USA, NA, PHH Mortgage Corporation. (Moore, Ryan) (Entered: 03/11/2020 at 11:49:03)
03/11/2020		21	Notice of Appearance . Filed by Ryan S Moore on behalf of NewRez, LLC. (Moore, Ryan) (Entered: 03/11/2020 at 15:19:45)
03/11/2020		22	Amended Answer to Complaint (Related document(s) 7 Amend Complaint). Filed by Ryan S Moore on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Moore, Ryan) (Entered: 03/11/2020 at 15:20:37)
03/11/2020		23	Joint Report RE: <i>Discovery Plan..</i> Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) 18 Scheduling Order). (Henry,

			Christina) (Entered: 03/11/2020 at 17:40:38)
03/17/2020		<u>24</u>	Notice of Trial and ORDER Setting Deadlines . Trial is scheduled for 3/15/2021 at 09:00 AM at Judge Heston's Courtroom H, Union Station. (TGR) (Entered: 03/17/2020 at 08:31:31)
03/17/2020		<u>25</u>	Response to <i>Motion for Summary Judgment and Dismissal by Defendant QLS</i> (Related document(s) <u>13</u> Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Attachments: # <u>1</u> Proposed Order) (Henry, Christina) (Entered: 03/17/2020 at 17:33:30)
03/17/2020		<u>26</u>	Declaration of <i>Christina L Henry</i> (Related document(s) <u>13</u> Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Henry, Christina) (Entered: 03/17/2020 at 17:34:20)
03/17/2020		<u>27</u>	Withdrawal of Document. Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) <u>25</u> Response). (Henry, Christina) (Entered: 03/17/2020 at 18:31:23)
03/17/2020		<u>28</u>	Response to <i>Motion for Summary Judgment and Dismissal ny Defendant Quality Loan Service Coro of Washington</i> (Related document(s) <u>13</u> Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Attachments: # <u>1</u> Proposed Order) (Henry, Christina) (Entered: 03/17/2020 at 18:35:04)
03/19/2020		<u>29</u>	Reply (Related document(s) <u>13</u> Motion for Summary Judgment)... Filed by Joseph W McIntosh of McCarthy & Holthus, LLP on behalf of Quality Loan Service Corporation of Washington. (McIntosh, Joseph) (Entered: 03/19/2020 at 16:54:03)
03/20/2020			Notice to Court of Intent to Argue. Date of Hearing: 3/24/2020. Filed by Joseph W McIntosh on behalf of Quality Loan Service Corporation of Washington. (Related document(s) <u>13</u> Motion for Summary Judgment). (McIntosh, Joseph) (Entered: 03/20/2020 at 10:57:47)
03/24/2020			Minutes. Hearing Continued. Appearances via phone: Christina Henry for Plaintiff, Joseph McIntosh for Quality Loan Service, Ryan Moore for PHH Mortgage Corporation (related document(s): <u>13</u> Motion for Summary Judgment filed by Quality Loan Service Corporation of Washington) Continued Hearing scheduled for 06/25/2020 at 10:00 AM at Judge Heston's Courtroom H, Union Station. (SAB) (Entered: 03/24/2020 at 14:10:39)
03/24/2020		<u>30</u>	PDF with attached Audio File. Court Date & Time [3/24/2020 1:20:03 PM]. File Size [17845 KB]. Run Time [00:49:34]. ((13) Motion for Summary Judgment). (admin). (Entered: 03/24/2020 at 14:31:03)
03/26/2020		<u>31</u>	Notice of <i>Corporate Disclosure Statement</i> Filed by Ryan S Moore on behalf of PHH Mortgage Corporation. (Moore, Ryan) (Entered: 03/26/2020 at 10:38:05)
03/26/2020		<u>32</u>	Notice of <i>Corporate Disclosure Statement</i> Filed by Ryan S Moore on behalf of NewRez, LLC. (Moore, Ryan) (Entered: 03/26/2020 at 10:39:10)
03/26/2020		<u>33</u>	Notice of <i>Corporate Disclosure Statement</i> Filed by Ryan S Moore on behalf of HSBC Bank USA, NA. (Moore, Ryan) (Entered: 03/26/2020 at

			10:40:03)
03/27/2020	<u>34</u>	Mediation Certification Filed by Henry, Christina (Entered: 03/27/2020 at 14:26:12)	
03/28/2020	<u>35</u>	Notice Regarding Final Adjudication and Consent . Filed by Ryan S Moore on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Moore, Ryan) (Entered: 03/28/2020 at 10:15:38)	
03/31/2020	<u>36</u>	Notice Regarding Final Adjudication and Consent . Filed by Joseph W McIntosh of McCarthy & Holthus, LLP on behalf of Quality Loan Service Corporation of Washington. (McIntosh, Joseph) (Entered: 03/31/2020 at 16:59:14)	
05/13/2020	<u>37</u>	Stipulation by and between <i>Plaintiff and Defendants For Order To Continue Hearing Date For Summary Judgment and for Deposition Order</i> . Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) <u>13</u> Motion for Summary Judgment, Minutes Hearing Continued). (Henry, Christina) (Entered: 05/13/2020 at 10:32:17)	
05/13/2020	<u>38</u>	Received UNSIGNED Order Forwarded to Chambers for Judge's Signature. Filed by Henry, Christina. Related document <u>13</u> (Entered: 05/13/2020 at 11:02:02)	
05/14/2020	<u>39</u>	ORDER Granting Stipulation for Order to Continue Hearing Date for Summary Judgment and for Deposition Order. (Related Doc # <u>13</u>) . (TGR) (Entered: 05/14/2020 at 10:32:43)	
05/14/2020		Minutes. Hearing Continued. (related document(s): <u>13</u> Motion for Summary Judgment) Continued Hearing scheduled for 09/03/2020 at 09:00 AM at Judge Heston's Courtroom H, Union Station. (SAB) (Entered: 05/14/2020 at 11:46:59)	
05/18/2020	<u>40</u>	ORDER Directing Deposit of Surplus Funds to be Placed in a Non-Interest- Bearing Account in Court Registry Re: Stipulation for Deposit of Surplus Funds Into the Court Registry Pending Further Court Order (ECF NO. 15). (Related document(s) <u>15</u>). (TGR) (Entered: 05/18/2020 at 11:49:36)	
05/20/2020	<u>41</u>	BNC Certificate of Notice (Related document(s) <u>40</u> Order GENERIC). Notice Date 05/20/2020. (Admin.) (Entered: 05/20/2020 at 21:23:07)	
05/21/2020		Receipt of Deposit into Court Registry; Amount \$ 167,407.96. Receipt #233847 by VB. (BEF) (Entered: 05/22/2020 at 14:06:13)	
08/06/2020	<u>42</u>	Plaintiff's Motion for Summary Judgment (<i>Partial</i>) with Notice of Hearing. Filed by Christina L Henry on behalf of Sarah Hoover The Hearing date is set for 9/3/2020 at 09:00 AM at Judge Heston's Courtroom H, Union Station. Response due by 8/27/2020. (Henry, Christina) (Entered: 08/06/2020 at 23:57:03)	
08/07/2020	<u>43</u>	Declaration of <i>Sara Hoover in Support of Motion for Partial Summary Judgment</i> (Related document(s) <u>42</u> Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7) (Henry, Christina) (Entered: 08/07/2020 at 00:05:14)	

08/07/2020		<u>44</u>	Declaration of <i>Christina L Henry in Support of Partial Motion to Dismiss</i> (Related document(s) <u>42</u> Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B – part 1 # <u>3</u> Exhibit B – part 2 # <u>4</u> Exhibit C # <u>5</u> Exhibit D # <u>6</u> Exhibit E # <u>7</u> Exhibit F) (Henry, Christina) (Entered: 08/07/2020 at 00:29:01)
08/07/2020		<u>45</u>	Notice of Hearing on <i>Plaintiff's Motion for Partial Summary Judgment</i> (Related document(s) <u>42</u> Motion for Summary Judgment). Filed by Christina L Henry on behalf of Sarah Hoover. (Henry, Christina) (Entered: 08/07/2020 at 00:42:45)
08/07/2020		<u>46</u>	Supplemental Filing of <i>Proposed Order</i> . Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) <u>42</u> Motion for Summary Judgment). (Henry, Christina) (Entered: 08/07/2020 at 00:55:00)
08/07/2020		<u>47</u>	Stipulated Motion <i>Entry of Stipulated Protective Order</i> Filed by Ryan S Moore on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation (Attachments: # <u>1</u> Proposed Order [Proposed] Stipulated Protective Order) (Moore, Ryan) (Entered: 08/07/2020 at 11:29:12)
08/07/2020		<u>48</u>	Received UNSIGNED Order Forwarded to Chambers for Judge's Signature. Filed by Moore, Ryan. Related document <u>47</u> (Entered: 08/07/2020 at 16:02:02)
08/10/2020		<u>49</u>	Letter From Attorney to Judge: <i>re Request for Status Conference</i> . Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) <u>18</u> Scheduling Order). (Henry, Christina) (Entered: 08/10/2020 at 10:59:37)
08/10/2020		<u>50</u>	Supplemental Declaration of <i>Christina L Henry in Support of Partial Motion for Summary Judgment</i> (Related document(s) <u>42</u> Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Attachments: # <u>1</u> Exhibit G) (Henry, Christina) (Entered: 08/10/2020 at 14:29:59)
08/10/2020		<u>51</u>	Letter To and Subject: <i>Response to Letter from Attorney to Judge</i> (Related document(s) <u>49</u> Letter From Attorney to Judge). Filed by Ryan S Moore on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Moore, Ryan) (Entered: 08/10/2020 at 14:43:45)
08/11/2020		<u>52</u>	Submitted But Not Entered. (Related document(s) <u>47</u> Motion). (TGR) (Entered: 08/11/2020 at 09:16:05)
08/12/2020		<u>53</u>	ORDER Setting Telephonic Status Conference . The Hearing date is set for 8/20/2020 at 02:00 PM at Telephonically. (TGR) (Entered: 08/12/2020 at 13:47:41)
08/19/2020		<u>54</u>	Stipulated Motion <i>Entry of Protective Order</i> Filed by Ryan S Moore on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation (Moore, Ryan) (Entered: 08/19/2020 at 08:56:43)
08/19/2020		<u>55</u>	Received UNSIGNED Order Forwarded to Chambers for Judge's Signature. Filed by Moore, Ryan. Related document <u>54</u> (Entered: 08/19/2020 at 09:02:02)
08/19/2020			Minutes. Hearing Continued. (related document(s): <u>53</u> Telephonic Status Conference) Continued Hearing scheduled for 08/20/2020 at 01:00 PM at

			Judge Heston's Courtroom H, Union Station. (SAB) (Entered: 08/19/2020 at 15:04:46)
08/19/2020		<u>56</u>	Stipulated Protective ORDER (Related document(s) <u>54</u>). (Attachments: # <u>1</u>) (CMK) (Entered: 08/19/2020 at 16:27:17)
08/20/2020			Minutes. Hearing Held. Appearances via phone: Ryan Moore for PHH Mortgage Corporation, John McIntosh for IH6 Property Washington L.P., Joseph McIntosh for Quality Loan Service Corporation of Washington, Christina Henry for Debtor (related document(s): <u>53</u> Status Conference) All summary judgment motions to be filed by 10/16/20 and set for hearing on 11/20/20 at 9:00 AM; Summary judgment motions previously filed are continued to 11/20/20 at 9:00 AM. (SAB) (Entered: 08/20/2020 at 14:16:44)
08/20/2020			Minutes. Hearing Continued. (related document(s): <u>13</u> Motion for Summary Judgment. Filed by Joseph W McIntosh on behalf of Quality Loan Service Corporation of Washington) Continued Hearing scheduled for 11/20/2020 at 09:00 AM at Judge Heston's Courtroom H, Union Station. (SAB) (Entered: 08/20/2020 at 14:19:51)
08/20/2020			Minutes. Hearing Continued. (related document(s): <u>42</u> Plaintiff's Motion for Summary Judgment (Partial)) Continued Hearing scheduled for 11/20/2020 at 09:00 AM at Judge Heston's Courtroom H, Union Station. (SAB) (Entered: 08/20/2020 at 14:21:17)
08/20/2020		<u>57</u>	PDF with attached Audio File. Court Date & Time [8/20/2020 1:00:33 PM]. File Size [12694 KB]. Run Time [00:35:16]. (Status Conference). (admin). (Entered: 08/20/2020 at 14:31:02)
10/15/2020		<u>58</u>	Motion for Summary Judgment <i>Renewed</i> (Dkts #13 and #29) with Notice of Hearing. Filed by Joseph W McIntosh on behalf of Quality Loan Service Corporation of Washington The Hearing date is set for 11/20/2020 at 09:00 AM at Judge Heston's Courtroom H, Union Station. Response due by 11/13/2020. (Attachments: # <u>1</u> Proposed Order) (McIntosh, Joseph) <i>Incorrect Hearing Date and Incomplete Call In Information</i> . Modified on 10/15/2020 (TGR). (Entered: 10/15/2020 at 14:25:59)
10/15/2020		<u>59</u>	Notice of Hearing (Related document(s) <u>42</u> Plaintiff's Motion for Summary Judgment (Partial)). Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Henry, Christina) (Entered: 10/15/2020 at 15:29:36)
10/15/2020		60	Withdrawal of Document. Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) <u>59</u> Hearing Notice). (Henry, Christina) (Entered: 10/15/2020 at 15:38:51)
10/15/2020		<u>61</u>	Notice of Amended/Continued Hearing (Related document(s) <u>42</u> Motion for Summary Judgment). Filed by Christina L Henry on behalf of Sarah Hoover. Continued Hearing scheduled for 11/20/2020 at 09:00 AM at Judge Heston's Courtroom H, Union Station. Response due by 11/13/2020. (Henry, Christina) (Entered: 10/15/2020 at 15:43:37)
10/16/2020		<u>62</u>	Defendant's Motion for Summary Judgment with Notice of Hearing and Supplemental Declaration of Christina L Henry via supplemental doc <u>79</u> . Filed by Ryan S Moore on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation The Hearing date is set for 11/20/2020 at 09:00 AM at Telephonically. Response due by 11/13/2020.

			(Attachments: # 1 Proposed Order Proposed Order) (Moore, Ryan) <i>No Notice of Hearing Included. Filer Notified.</i> Modified on 10/19/2020 (TGR). Modified on 1/7/2021 (DAS) (Entered: 10/16/2020 at 21:10:21)
10/16/2020		63	Declaration of <i>Ryan S. Moore</i> (Related document(s) 62 Motion for Summary Judgment). Proof of Service. Filed by Ryan S Moore of Houser LLP on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Moore, Ryan) (Entered: 10/16/2020 at 21:12:35)
10/16/2020		64	Declaration (Related document(s) 62 Motion for Summary Judgment). Proof of Service. Filed by Ryan S Moore of Houser LLP on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Moore, Ryan) (Entered: 10/16/2020 at 21:16:03)
10/16/2020		65	Motion for Summary Judgment with Supplemental Declaration via Supplemental Doc 79 and Notice of Hearing. Filed by John Anthony McIntosh on behalf of IH6 Property Washington LP The Hearing date is set for 11/20/2020 at 09:00 AM at Judge Heston's Courtroom H, Union Station. Response due by 11/13/2020. (Attachments: # 1 Proposed Order) (McIntosh, John). Related document(s) 79 Declaration filed by Plaintiff Sarah Hoover. Modified on 1/7/2021 (DAS). (Entered: 10/16/2020 at 22:50:57)
10/19/2020		66	Notice of Hearing (<i>Related document(s) 62</i>). Filed by Ryan S Moore of Houser LLP on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Moore, Ryan) (Entered: 10/19/2020 at 15:12:40)
10/30/2020		67	Withdrawal and Substitution of Attorney. Involvement of Ryan S Moore Terminated.. Filed by Robert W Norman on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Norman, Robert) (Entered: 10/30/2020 at 09:51:20)
11/13/2020		68	Response to <i>Plaintiff's Motion for Partial Summary Judgment</i> (Related document(s) 42 Motion for Summary Judgment). Proof of Service. Filed by Robert W Norman on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Norman, Robert) (Entered: 11/13/2020 at 16:55:13)
11/13/2020			Notice to Court of Intent to Argue. Date of Hearing: 11/20/2020. Filed by Robert W Norman on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Related document(s) 42 Motion for Summary Judgment, 45 Hearing Notice, Minutes Hearing Continued, 62 Motion for Summary Judgment, 66 Hearing Notice). (Norman, Robert) (Entered: 11/13/2020 at 17:13:25)
11/13/2020		69	Response to (Related document(s) 42 Motion for Summary Judgment)... Filed by John Anthony McIntosh of Schweet Linde & Coulson on behalf of IH6 Property Washington LP. (Attachments: # 1 Pleading Declaration) (McIntosh, John) (Entered: 11/13/2020 at 17:54:33)
11/13/2020		70	Plaintiff's Response to <i>COMBINED OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT BY DEFENDANTS PHH MORTGAGE CORPORATION AND IH6 PROPERTY</i> (Related document(s) 62 Motion for Summary Judgment, 65 Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Henry, Christina) (Entered: 11/13/2020 at 20:53:03)
11/13/2020		71	Withdrawal of Document. Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) 70 Response). (Henry, Christina) (Entered:

			11/13/2020 at 21:31:15)
11/13/2020		<u>72</u>	Plaintiff's Response to <i>Plaintiffs Combined Opposition To Motions for Summary Judgment by Defendants PHH Mortgage Corporation, HSBC Bank, and NewRez, LLC, And IH6 Property</i> (Related document(s) <u>62</u> Motion for Summary Judgment, <u>65</u> Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Henry, Christina) (Entered: 11/13/2020 at 21:39:57)
11/13/2020		<u>73</u>	Declaration of <i>Christina L Henry in Support of Plaintiffs Combined Opposition To Motions for Summary Judgment by Defendants PHH Mortgage Corporation, HSBC Bank, and NewRez, LLC, And IH6 Property</i> (Related document(s) <u>62</u> Motion for Summary Judgment, <u>65</u> Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Prudent Exhibit 3 # <u>3</u> Prudent Exhibit 4 # <u>4</u> Prudent Exhibit 6 # <u>5</u> Prudent Exhibit 10 # <u>6</u> Prudent Exhibit 13 # <u>7</u> Prudent Exhibit 15 # <u>8</u> Prudent Exhibit 16 # <u>9</u> Exhibit B # <u>10</u> Exhibit C # <u>11</u> Exhibit D # <u>12</u> Exhibit E # <u>13</u> Exhibit F # <u>14</u> Exhibit G # <u>15</u> QLS Exhibit 1 # <u>16</u> Exhibit H # <u>17</u> IHG Exhibit 1 # <u>18</u> Exhibit I # <u>19</u> Exhibit J # <u>20</u> Exhibit K # <u>21</u> Exhibit L # <u>22</u> Stenman Exhibit 3) (Henry, Christina) (Entered: 11/13/2020 at 21:51:27)
11/14/2020			Notice to Court of Intent to Argue. Date of Hearing: 11/20/2020. Filed by Christina L Henry on behalf of Sarah Hoover. (Related document(s) <u>42</u> Motion for Summary Judgment). (Henry, Christina) (Entered: 11/14/2020 at 17:43:11)
11/16/2020			Notice to Court of Intent to Argue. Date of Hearing: 11/20/2020. Filed by John Anthony McIntosh on behalf of IH6 Property Washington LP. (Related document(s) <u>65</u> Motion for Summary Judgment). (McIntosh, John) (Entered: 11/16/2020 at 09:09:20)
11/16/2020			Notice to Court of Intent to Argue. Date of Hearing: 11/20/2020. Filed by Joseph W McIntosh on behalf of Quality Loan Service Corporation of Washington. (Related document(s) <u>58</u> Motion for Summary Judgment). (McIntosh, Joseph) (Entered: 11/16/2020 at 09:30:17)
11/16/2020		<u>74</u>	Reply (Related document(s) <u>58</u> Motion for Summary Judgment)... Filed by Joseph W McIntosh of McCarthy & Holthus, LLP on behalf of Quality Loan Service Corporation of Washington. (McIntosh, Joseph) (Entered: 11/16/2020 at 15:49:11)
11/17/2020		<u>75</u>	Reply to <i>Plaintiff's Combined Opposition to Motions for Summary Judgment</i> (Related document(s) <u>72</u> Response). Proof of Service. Filed by Robert W Norman on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Norman, Robert) (Entered: 11/17/2020 at 16:55:34)
11/17/2020		<u>76</u>	Reply <i>In Support of Plaintiffs Motion for Partial Summary Judgment</i> (Related document(s) <u>42</u> Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Henry, Christina) (Entered: 11/17/2020 at 17:46:33)
11/17/2020		<u>77</u>	Reply (Related document(s) <u>65</u> Motion for Summary Judgment)... Filed by John Anthony McIntosh of Schweet Linde & Coulson on behalf of IH6 Property Washington LP. (Attachments: # <u>1</u> Pleading Declaration) (McIntosh, John) (Entered: 11/17/2020 at 20:17:58)
11/20/2020			

			Minutes. Hearing Held. Appearances via Phone: Christina Henry for Plaintiff; Joseph McIntosh for Quality Loan Service; John McIntosh for IH6 Property; Robert Norman for PHH Mortgage. (related document(s): 13 Motion for Summary Judgment) Matter Under Advisement. (TGR) (Entered: 11/20/2020 at 10:04:14)
11/20/2020			Minutes. Hearing Held. Appearances via Phone: Christina Henry for Plaintiff; Joseph McIntosh for Quality Loan Service; John McIntosh for IH6 Property; Robert Norman for PHH Mortgage. (related document(s): 58 Defendant's Motion for Summary Judgment Renewed (Dkts #13 and #29) Filed by Joseph W McIntosh on behalf of Quality Loan Service Corporation of Washington) Matter Under Advisement. (TGR) (Entered: 11/20/2020 at 10:04:56)
11/20/2020			Minutes. Hearing Held. Appearances via Phone: Christina Henry for Plaintiff; Joseph McIntosh for Quality Loan Service; John McIntosh for IH6 Property; Robert Norman for PHH Mortgage. (related document(s): 65 Defendant's Motion for Summary Judgment Filed by John Anthony McIntosh on behalf of IH6 Property Washington LP) Matter Under Advisement. (TGR) (Entered: 11/20/2020 at 10:05:45)
11/20/2020			Minutes. Hearing Held. Appearances via Phone: Christina Henry for Plaintiff; Joseph McIntosh for Quality Loan Service; John McIntosh for IH6 Property; Robert Norman for PHH Mortgage. (related document(s): 42 Plaintiff's Motion for Summary Judgment (Partial)) Matter Under Advisement. (TGR) (Entered: 11/20/2020 at 10:06:27)
11/20/2020			Minutes. Hearing Held. Appearances via Phone: Christina Henry for Plaintiff; Joseph McIntosh for Quality Loan Service; John McIntosh for IH6 Property; Robert Norman for PHH Mortgage. (related document(s): 62 Defendant's Motion for Summary Judgment Filed by Ryan S Moore on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation) Matter Under Advisement. (TGR) (Entered: 11/20/2020 at 10:07:14)
11/20/2020		78	PDF with attached Audio File. Court Date & Time [11/20/2020 9:01:07 AM]. File Size [24591 KB]. Run Time [00:58:33]. (STATUS CONFERENCE re: (13) Motion for Summary Judgment). (admin). (Entered: 11/20/2020 at 10:31:02)
01/07/2021		79	Supplemental Declaration of <i>Christina L Henry in Support of Opposition to Motions for Summary Judgment by Defendants</i> (Related document(s) 73 Declaration 62 Defendants Motion for Summary Judgment, 65 Motion For Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Attachments: # 1 Exhibit K) (Henry,Christina). Related document(s) 62 filed by Defendant NewRez, LLC, Defendant PHH Mortgage Corporation, Defendant HSBC Bank USA, NA, 65 Motion for Summary Judgment filed by Defendant IH6 Property Washington LP. (Entered: 01/07/2021 at 16:17:08)
01/07/2021		80	Statement <i>Praecipe to Plaintiff's Combined Opposition to Motions For Summary Judgment By Defendants PHH Mortgage Corporation, HSBC Bank, and NewRez, LLC, and IH6 Property</i> (Related document(s) 62 Motion for Summary Judgment, 65 Motion for Summary Judgment)... Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Henry, Christina) (Entered: 01/07/2021 at 16:30:31)
02/08/2021		81	Memorandum Decision on Cross– Motions for Summary Judgment. (Related document(s) 58 , 62 , 65). (TGR) (Entered: 02/08/2021 at 16:23:49)

02/08/2021		<u>82</u>	ORDER on Cross– Motions for Summary Judgment. (Related document(s) <u>42</u> , <u>58</u> , <u>62</u> , <u>65</u>). (TGR) (Entered: 02/08/2021 at 16:27:14)
02/10/2021		<u>83</u>	BNC Certificate of Notice (Related document(s) <u>82</u> Order GENERIC). Notice Date 02/10/2021. (Admin.) (Entered: 02/10/2021 at 21:20:50)
02/12/2021			Set Hearing – Status Conference (Related document(s) <u>82</u>). The Hearing date is set for 2/18/2021 at 11:00 AM, Telephonically. (SAB) (Entered: 02/12/2021 at 11:45:27)
02/18/2021			Minutes. Hearing Continued. Appearances via phone: Christina Henry and Jason Anderson for Plaintiff; Joseph McIntosh for Quality Loan Service; John McIntosh for IH6 Property; Robert Norman for PHH Mortgage (related document(s): Status Conference) Deadline to file a motion for reconsideration and/or appeal extended to 02/26/21, Order forthcoming by Mr. Norman; Trial continued to 06/01/21— Continued status conference scheduled for 03/16/2021 at 11:00 AM at Telephonically. (SAB) (Entered: 02/18/2021 at 12:11:10)
02/18/2021		<u>84</u>	PDF with attached Audio File. Court Date & Time [2/18/2021 11:00:21 AM]. File Size [13512 KB]. Run Time [00:37:32]. (Status Conference). (admin). (Entered: 02/18/2021 at 13:31:03)
02/18/2021		<u>85</u>	Received UNSIGNED Order Forwarded to Chambers for Judge's Signature. Filed by Norman, Robert. Related document <u>82</u> (Entered: 02/18/2021 at 16:31:02)
02/19/2021		<u>86</u>	ORDER Granting Motion to Extend Deadlines for Filing Motion for Reconsideration, Notice of Appeal, and Motion for Leave to Appeal. (Related document(s) <u>82</u>) (SLM) (Entered: 02/19/2021 at 16:38:55)
02/26/2021		<u>87</u>	Notice of Appearance . Filed by Emilie K Edling on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. (Edling, Emilie) (Entered: 02/26/2021 at 12:56:14)
02/26/2021		<u>88</u>	Motion to Reconsider. Filed by Emilie K Edling on behalf of HSBC Bank USA, NA, IH6 Property Washington LP, NewRez, LLC, PHH Mortgage Corporation. (Related document(s) <u>92</u> Amended Motion to Reconsider) (Edling, Emilie) <i>Modified on 3/3/2021.</i> (SLM) (Entered: 02/26/2021 at 17:48:02)
02/26/2021		<u>89</u>	Notice of Appeal and Statement of Election to District Court. USDC Case No 21–5154–BHS; Internal Appeal No 21–T003. Fee Due \$ 298. Filed by Emilie K Edling on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. Record Transmission due by 03/26/2021. (Related document(s) <u>81</u> , <u>82</u>) (Edling, Emilie) <i>Modified on 3/3/2021.</i> (SLM) (Entered: 02/26/2021 at 19:26:29)
02/26/2021			Receipt of filing fee for Notice of Appeal and Statement of Election(20–04002–MJH) [appeal,ntcaple] (298.00). Receipt number A26942770. Fee amount \$ 298.00. (U.S. Treasury) (Entered: 02/26/2021 at 19:29:06)
02/26/2021		<u>90</u>	Motion for Leave to Appeal . Filed by Emilie K Edling on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation. Leave to Appeal Response due: 03/15/2021. (Edling, Emilie) (Entered: 02/26/2021 at 19:37:10)

03/02/2021		<u>91</u>	Debtor's Response to <i>Defendants-Appellants' Motion for Leave to Appeal Pursuant to 278 U.S.C. 158(a)(3) and FRBP Rules 8002 and 8004</i> (Related document(s) <u>89</u> Notice of Appeal and Statement of Election, <u>90</u> Motion for Leave to Appeal) Proof of Service. Filed by Christina L Henry of Henry & Degraaff, P.S. on behalf of Sarah Hoover. (Henry, Christina) <i>Modified on 3/3/2021.</i> (SLM) (Entered: 03/02/2021 at 12:33:32)
03/03/2021		<u>92</u>	Amended Motion to Reconsider (<i>Amended to Correct Caption Only</i>) Filed by Emilie K Edling on behalf of HSBC Bank USA, NA, NewRez, LLC, PHH Mortgage Corporation (Edling, Emilie) (Entered: 03/03/2021 at 13:01:47)

1 THE HONORABLE MARY JO HESTON
2 Chapter 13
3 Noted for Hearing: February 25, 2021

5 UNITED STATES BANKRUPTCY COURT
6 WESTERN DISTRICT OF WASHINGTON AT TACOMA

7
8 In re
9 SARAH HOOVER,
10 Debtor.

Chapter 13
Case No.: 19-42890-MJH
Adversary No.: 20-04002-MJH

11 SARAH HOOVER,
12 Plaintiff,
13 vs.

**DEFENDANTS PHH MORTGAGE
CORPORATION, HSBC BANK
USA, N.A., AS TRUSTEE, NEW
REZ, LLC, AND IH6'S MOTION
FOR RECONSIDERATION**

14
15 QUALITY LOAN SERVICE
16 CORPORATION OF WASHINGTON,
17 PHH MORTGAGE CORPORATION
18 D/B/A PHH MORTGAGE SERVICES,
19 HSBC BANK USA, N.A., AS
TRUSTEE OF THE FIELDSTONE
MORTGAGE INVESTMENT TRUST,
SERIES 2006-2, NEWREZ, LLC, AND
IH6 PROPERTY WASHINGTON, L.P.
D/B/A INVITATION HOMES

20 Defendants.
21

22 I. INTRODUCTION

23
24 Pursuant to Federal Rules of Civil Procedure (“FRCP”) 60(b), incorporated by
25 Federal Rule of Bankruptcy Procedure (“FRBP”) 9024, Defendants PHH Mortgage
26 Corporation D/B/A PHH Mortgage Services, NewRez, LLC, and HSBC Bank USA, N.A., as

DEFENDANTS' MOTION FOR RECONSIDERATION
AP No. 20-04002-MJH
Page 1

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1 Trustee of the Fieldstone Mortgage Investment Trust, Series 2006-2 (collectively,
2 “Defendants”) hereby move this Court for reconsideration.

3 **II. MOTION**

4 Pursuant to FRCP 60(b), incorporated by FRBP 9024, and also pursuant to Local
5 Bankruptcy Rule 9013(h) and Washington CR 7(h), Defendants move as follows:

6 1. That, pursuant to FRCP 60(b)(1) and (6), this Court reconsider its grant of
7 summary judgment on the issue of whether Defendants “willfully” violated the automatic
8 bankruptcy stay, and instead rule that there are material issues of fact which render this issue
9 most appropriate for disposition at trial.

10 2. That, pursuant to FRCP 60(b)(1) and (6), this Court reconsider its
11 finding/ruling that Defendants’ actions showed a “complete disregard for the automatic stay
12 and Ms. Hoover’s rights by failing to stop the Sale despite receiving notice of the
13 Bankruptcy,” (ECF No. 81 at 20), and/or clarify that the finding is not a finding of intent
14 pertinent to Plaintiff’s claim for punitive damages and will not be given preclusive effect.

15 3. That, pursuant to FRCP 60(b)(1), (2), and (6), this Court reconsider its finding
16 that the balancing of equities weigh against granting Defendants’ motion to annul the
17 automatic stay under § 362(d) in order to retroactively validate the void post-bankruptcy sale.

18 4. That, pursuant to FRCP 60(b)(1) and (6), this Court reconsider its ruling that
19 Plaintiff alleged a claim for damages sufficient to allow summary judgment, given Plaintiff
20 had an affirmative duty to present *evidence* of damages, not just allege damages.

21 This motion is supported by the Court’s record in this matter, and the following points
22 and authorities.

23 **III. LEGAL STANDARD FOR MOTIONS
FOR RECONSIDERATION**

24 Defendants acknowledge that motions for reconsideration are disfavored; however,
25 they are nonetheless appropriate upon a showing of manifest error or new facts or legal
26

1 authority that could not have been presented earlier. *Aronson v. Dog Eat Dog Films, Inc.*,
 2 738 F. Supp. 2d 1104, 1118 (W.D. Wash. 2010); Wash. Civ. R. 7(h)(1). Accordingly, a
 3 motion for reconsideration is appropriate if there is a need to point out a fact or point of law
 4 that the Court failed to consider, or may have misunderstood or overlooked. *Kim v. Targa*
 5 *Real Estate Serv., Inc.*, No. C07-358P, 2007 WL 1600906, at *1 (W.D. Wash. June 1, 2007).
 6 While established jurisprudence sets a high bar for motions for reconsideration in order to
 7 preserve the resources of the Court, in truth, reconsideration of “an interlocutory order is a
 8 matter of the trial court’s ‘good sense,’ and trial judges constantly reexamine their rulings on
 9 the basis of new information or argument or just fresh thoughts.” *In re Vacation Vill, Inc.*,
 10 No. ADV.03-01003-BAM, 2006 WL 6811013, at *14 (BAP 9th Cir. Mar. 1, 2006)
 11 (paraphrasing *In re White Crane Trading Co., Inc.*, 170 B.R. 694, 700-01, n. 9 (Bankr. E.D.
 12 Cal. 1994)). This Court has the “inherent procedural power to reconsider, rescind, or modify
 13 an interlocutory order for cause seen by it to be sufficient” at any time. *City of Los Angeles,*
 14 *Harbor Div. v. Santa Monica BayKeeper*, 254 F.3d 882, 885-87 (9th Cir. 2001).

15 Here, a trial in this matter appears imminent. Moreover, some of the rulings discussed
 16 below determined issues about which there was conflicting evidence. In such a case, good
 17 cause supports reconsideration as to whether the evidence should be more thoroughly fleshed
 18 out at trial.

19 **III. POINTS AND AUTHORITIES**

21 **A. Defendants’ Motion to Reconsider Grant of Summary Judgment on the**
 22 **Issue of Whether Defendants “Willfully” Violated the Automatic**
 23 **Bankruptcy Stay**

24 Defendants request reconsideration of this Court’s ruling granting summary judgment
 25 on the issue of whether Defendants committed a “willful” violation of the automatic
 26 bankruptcy stay. The ruling appears to be manifest error because (1) it failed to consider

1 arguments raised by Defendants establishing why they did not have notice of a pertinent
 2 bankruptcy filing, and (2) appears to have viewed disputed evidence in the best light for
 3 Plaintiff, the moving party, rather than viewing the evidence in the best light for Defendants,
 4 as required, and deferring resolution of disputed issues of fact to trial. *Landis v. Washington*
 5 *State Major League Baseball Stadium Pub. Facilities Dist.*, 403 F. Supp. 3d 907, 914 (W.D.
 6 Wash. 2019) (noting conflicting evidence on summary judgment is viewed in the best light
 7 for the non-moving party); *Forsyth v. City of Buena Park*, 691 F. App'x 363, 365 (9th Cir.
 8 2017) (noting where there is conflicting evidence, claims “should be resolved at trial, not at
 9 summary judgment) (*citing Perez v. Curcio*, 841 F.2d 255, 258 (9th Cir. 1988)).

10 1. Defendants cannot be considered to have “willfully” violated the stay given they
 11 had no notice of any pertinent bankruptcy due to Ms. Hoover’s failure to take title,
complete assumption paperwork, or become a successor-in-interest

12 This Court rejected Defendants’ argument that Ms. Hoover’s failure to take title to the
 13 Property, failure to assume the Loan, and failure to complete the necessary paperwork to be
 14 designated a confirmed successor-in-interest meant that the Property was not protected under
 15 the automatic bankruptcy stay. (Memorandum, ECF No., 81 at 14-17.) However, these issues
 16 were also relevant to whether Defendants had enough information to know there was a
 17 pertinent bankruptcy filing, such that Defendants’ violation of the stay was “willful.” For
 18 example, as explained in Defendants’ Motion for Summary Judgment, if Ms. Hoover had ever
 19 provided adequate notice and confirmation of her interest in the Property, or completed the
 20 successor-in-interest and assumption documents sent to her,¹ PHH would have understood
 21

22 ¹ Defendants presented sworn evidence that PHH had sent Ms. Hoover the required documents to
 23 become successor-in-interest or to assume the Loan multiple times, beginning nine months
 24 before the foreclosure sale (Prudent Dec., ¶¶ 17-18, ECF No. 64), and she did not return
 25 complete paperwork needed to become a successor-in-interest until three months after the sale.
 26 (*Id.* at ¶ 27.) Ms. Hoover, in turn, presented evidence that she tried multiple times from May
 2019 through July 2019 to get the appropriate documents to Ocwen or PHH, but had difficulties.
 (Hoover Dec., ¶¶ 20-27, 35, ECF No. 43.) However, summary judgment proceedings are not the
 appropriate vehicle to weigh the credibility of conflicting evidence; rather, the evidence should
 have been viewed in the best light for Defendants as the non-moving party. *Landis v.*

DEFENDANTS’ MOTION FOR RECONSIDERATION

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1 her interest and postponed the sale. (Defs' Motion, ECF No. 62, at 10-11.)² Defendants also
 2 explained that Ms. Hoover refused to provide evidence of a recorded deed transferring the
 3 property from the deceased Mr. Suleiman to the Ali Suleiman Trust, or to Ms. Hoover, and
 4 she also did not timely provide Defendants a copy of the full Suleiman Trust document.
 5 (Defs' MSJ, ECF No. 62, at 7-8 (citing Prudent Dec., ¶¶ 18-19, Ex. 9; Moore Dec., Ex. H,
 6 Hoover Dep. Tr. at 70:21-71:4).) This Court's ruling that "irrelevant technicalities with title"
 7 did not prevent the Property from becoming a part of the bankruptcy estate overlooks the fact
 8 that these technicalities were also highly pertinent to the issue of Defendants' notice of a
 9 pertinent bankruptcy, which was required to find Defendants conduct "willful." *Pinkstaff v.*
 10 *United States*, 974 F.2d 113, 115 (9th Cir.1992).

11 Here, if Ms. Hoover had presented a copy of a deed transferring title to her as
 12 requested, Defendants would have had clear notice of her interest in the Property and the
 13 existence of a pertinent bankruptcy. Moreover, in general, the transfer of title through a
 14 recorded document is the *primary* method through which parties have actual or constructive
 15 notice of the interest of others. *See, e.g., Miller v. Smith*, 119 Wash. 163, 167–68, 205 P. 386,
 16 388 (1922) (noting failure to record interest meant third parties had no notice of it). But
 17 because Ms. Hoover was not in title, any routine title report obtained prior to foreclosure
 18 would not have disclosed her interest, and Defendants could not have known and would not
 19 have had any way to verify that interest. Indeed, IH6 researched the condition of the title
 20 prior to the sale and there were no public records that disclosed Ms. Hoover's claimed interest.
 21 (Bankr. No. 19-42890, Lappano Decl. at ¶ 4, ECF No. 19.) QLS, on whom Defendants relied
 22 to properly conduct the sale, also attempted to verify Ms. Hoover's interest in the Property,
 23

24 *Washington State Major League Baseball Stadium Pub. Facilities Dist.*, 403 F. Supp. 3d 907,
 914 (W.D. Wash. 2019)

25 ² *See also* Defendants' Response to Plaintiff's Motion for Partial Summary Judgment, ECF No.
 68, at 8-9, wherein Defendants argue that they had inadequate information to know of Ms.
 26 Hoover's interest in the Property.

1 and was unable to do so. (Bankr. No. 19-42890, Stenman Decl. ¶ 2, ECF No. 20; Henry Decl.
 2 Ex. L, Stenman Dep. 90:1-11, July 7, 2020, ECF No. 73.)

3 Here, one can readily imagine that a foreclosing lender routinely receives calls with
 4 explanations and inquiries aimed at stopping a foreclosure sale. This Circuit's precedent
 5 concerning willful violations of the automatic stay does not envision that parties will halt
 6 collection efforts as to all of their financial interests upon notice of an unknown third-party's
 7 bankruptcy proceeding, where the third-party holds no known or verifiable interest. It would
 8 be unreasonable to expect a creditor to stop foreclosure activity against a borrower on the
 9 basis of a phone call from a non-borrower, non-owner, who reports that she is filing for
 10 bankruptcy, when there is no basis to believe the person has an ownership interest in the
 11 property being foreclosed, or is obliged as a debtor. Yet, this is exactly what this Court's
 12 ruling requires of creditors.

13 Further, this Court found that all parties agreed in the proceedings before the Court
 14 that Ms. Hoover had some *interest* in the Property (Memorandum at 15, ECF 81), but failed
 15 to appreciate that there was no evidence the Defendants were aware of that interest at the
 16 time of the foreclosure sale.³ Compounding this lack of notice to Defendants, Ms. Hoover's
 17 last minute bankruptcy filing (made four months after she received notice of an impending
 18 foreclosure sale), provided little opportunity for the Defendants to investigate her claim that
 19 she had an interest in the Property, and there is no evidence that she provided Defendants
 20 proof of any interest.

21 The Court's ruling is particularly concerning in light of the fact that the only evidence
 22 before this Court of PHH's knowledge that Ms. Hoover filed for bankruptcy is the evidence
 23 of a (1) one-page facsimile to PHH one day before the sale, by a party (Elite Legal Network)
 24

25 ³ For example, Ms. Hoover was asked during her deposition when she first provided the loan
 26 servicer with a full copy of the terms of the Suleiman Trust, and answered "I don't know."
 (Moore Dec., Ex. H, Hoover Dep. Tr., at 70:21-71:4, ECF 63.)

1 who was not authorized to speak on the account, concerning Ms. Hoover, who had no known
 2 interest in the Property (Prudent Dec., ¶ 24, ECF No. 64), and (2) at most, two phone calls
 3 one day before the sale, which PHH could not completely respond to because of Ms.
 4 Hoover's failure to complete the loan assumption or successor in interest documents.
 5 (Prudent Dec., ¶ 24, 25, ECF No. 64.) Ms. Hoover's version of this limited notice provided
 6 to PHH is relatively aligned with Mr. Prudent's declaration. (See Hoover Dec., ¶¶ 43-45,
 7 ECF No. 43.) Importantly, the testimony from Defendants' representative, Mr. Prudent –
 8 which is not countered by any evidence from Plaintiff – is that Defendants believed that Ms.
 9 Hoover's bankruptcy did not affect the Loan, which was not in her name as a borrower,
 10 successor-in-interest, or as an assuming party. (Prudent Dec., ¶ 25, ECF No. 64.)⁴

11 Admittedly, Ninth Circuit precedent indicates that the “willfulness” standard for
 12 violations of the automatic stay does not require specific intent, but only knowledge of the
 13 bankruptcy and intentional conduct. *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003).
 14 However, interpreting this standard as requiring a lender to stop foreclosure efforts on the
 15 mere report of a bankruptcy filing by one who has no known or recorded interest in the
 16 property is taking an extreme view of the willfulness standard, and finding knowledge where
 17 there is none. *See, e.g., Taggart v. Lorenzen*, 139 S. Ct. 1795, 1804, 204 L. Ed. 2d 129
 18 (2019) (“We note that the automatic stay provision uses the word “willful,” a word the law
 19 typically does not associate with strict liability”) Further, in recent years a shift has
 20 occurred in the Ninth Circuit, such that several courts in this jurisdiction have now held that
 21 a party’s “subjective good faith belief” that a bankruptcy stay is inapplicable “insulates the
 22 entity from liability for sanctions” *See, e.g., In re Bradford*, No. 18-25405-B-7, 2018

23
 24 ⁴ Further, it was undisputed in the proceedings below that if Ms. Hoover had completed the
 25 information earlier and submitted it to Ocwen or PHH before September 9, 2019, then when she
 26 called on September 12, 2019, she would have appeared as a successor-in-interest and PHH
 would have requested that the sale be postponed. (*Id.* at ¶ 28.) The only reason that did not
 occur, was because Ms. Hoover failed to fill out the required paperwork. (*Id.*)

1 WL 6422858, at *5 (Bankr. E.D. Cal. Dec. 4, 2018). *See also In re Freeland*, No. BR 19-
 2 32309-PCM7, 2020 WL 4726580, at *2 (Bankr. D. Or. Aug. 12, 2020) (noting “some
 3 question whether the traditional standard [for willfulness] is still applicable, or if the standard
 4 may be shifting such that a finding of willfulness is precluded where a creditor had an
 5 objectively reasonable basis for believing it was not violating the stay); *In re Moo Jeong*, No.
 6 6:19-BK-10728-WJ, 2020 WL 1277575, at *4 (BAP 9th Cir. Mar. 16, 2020) (noting
 7 assumption that contempt standard applied to a discharge violation – requiring no reasonably
 8 objective basis for conduct – also applies in the context of an automatic stay violation.)
 9 Here, Defendants had an objectively reasonable basis for believing they never violated the
 10 automatic stay.

11 Relatedly, a long-recognized exception to the traditional “willfulness” standard has
 12 been recognized where the law regarding the alleged violation is sufficiently unsettled. *See*
 13 *In re Univ. Med. Ctr.*, 973 F.2d 1065, 1088-89 (3d Cir. 1992). *See also Stancil v. Bradley*
 14 *Investments, LLC*, 487 B.R. 331, 343-344 (Bankr. D.C. 2013) (for an alleged violation of the
 15 automatic stay “when the law is sufficiently unsettled, willful violation of the statutory
 16 command is absent, and damages are not recoverable, because the offending party has not
 17 acted in violation of a command of which it had fair notice.”); *In re Reinhardt*, 209 B.R. 183,
 18 185-88 (Bankr. S.D.N.Y. 1997) (violation of stay was not willful where counsel acted in
 19 climate of confusing case law precedent); *In re Zurich*, 88 B.R. 721, 724-26 (Bankr. W.D.
 20 Pa. 1988) (violation of stay was not willful where there were no cases dealing with relevant
 21 section of Bankruptcy Code). Here, where substantial grounds existed for finding that the
 22 bankruptcy stay was inapplicable, a finding that any violation was “willful” was not
 23 supported.

24 In sum, in light of the conflicting evidence and lack of clear notice to Defendants of a
 25 pertinent bankruptcy filing, and the fact that any notice Defendants received gave them no
 26 time to investigate, among other circumstances, Defendants request this Court reconsider its

1 grant of summary judgment on the issue of whether Defendants knowingly violated the
 2 automatic bankruptcy stay, and instead rule that there are material issues of fact which render
 3 this issue most appropriate for disposition at trial.

4 **B. Defendants' Motion to Reconsider this Court's ruling that Defendants'
 5 actions showed a "complete disregard for the automatic stay and Ms.
 6 Hoover's rights"**

7 This Court also opined in its ruling that Defendants' conduct showed a "complete
 8 disregard for the automatic stay and Ms. Hoover's rights . . ." (ECF No. 81 at 20.)
 9 Defendants disagree; but, more importantly, the ruling comes appreciably close to indicating
 10 this Court has found conduct culpable of allowing punitive damages, and whether the court
 11 intended this is unclear. *In re Snowden*, 769 F.3d 651, 655–56 (9th Cir. 2014) (discussing
 12 court ruling finding punitive damages available for violation of bankruptcy stay due to
 13 party's "reckless disregard for the rights of customers who file for bankruptcy relief.") To
 14 the extent this Court intended to weigh in on that issue, Defendants request reconsideration
 15 in light of the fact that punitive damages was not raised by Plaintiff in her Motion for
 16 Summary Judgment, and Defendants therefore had no opportunity to make a record on this
 17 issue. Plaintiff's MSJ, at 3, ECF No. 42.)

18 **C. Defendants' Motion to Reconsider this Court's ruling that the balancing of
 19 equities weigh against granting Defendants' motion to annul the automatic
 20 stay under § 362(d)**

21 Further, Defendants request reconsideration on this Court's ruling that a balancing of
 22 the interests weighed in favor of denying Defendants' Annulment Motion. The ruling
 23 appears in large part premised on this Court's concern that annulling the stay would result in
 24 the ouster of Ms. Hoover and family members from the Property.⁵ Here, the equities appear

25
 26 ⁵ *But see In re Aki Oya*, No. BAP SC-19-1095-BKUL, 2019 WL 5390007, at *8 (B.A.P. 9th Cir. Oct. 18, 2019), *appeal dismissed sub nom. In re Oya*, No. 19-60060, 2019 WL 7946347

1 decidedly *off*-balance, where Ms. Hoover actively concealed her interest in the Property by
 2 leaving title in the name of Mr. Suleiman, refused to provide a grant deed to her loan servicer
 3 to establish her interest in the Property, failed to timely provide assumption or successor-in-
 4 interest documents that would have indicated to the servicer that she had an interest in the
 5 Property, delayed four months before filing for bankruptcy, and notified PHH the day before
 6 the bankruptcy sale, apparently expecting it to scramble to ascertain her interest in the
 7 Property, which was not ascertainable. Because of Ms. Hoover's default and many other
 8 failures, many of which were completely within her control, an innocent purchaser with no
 9 notice bought the Property at the sale, and Ms. Hoover now seeks an astronomical damages,
 10 and has recently served a new round of written discovery and deposition notices seeking
 11 production of all documents regarding the past five years' income statements, cash flow, net
 12 pretax profits, and also net worth for Defendants. Allowing Plaintiff to take advantage of the
 13 automatic bankruptcy stay in this manner, when she filed for the sole purpose of stopping the
 14 sale, did not even go through with the bankruptcy, and had far more notice than Defendants –
 15 but took less action – is, itself, inequitable.

16 **D. Defendants' Motion to Reconsider whether Plaintiff presented evidence of**
 17 **Damages**

18 In the proceedings below, this Court's Memorandum noted:

19 "PHH asserts that Ms. Hoover has not alleged or shown any actual damages
 20 and therefore Ms. Hoover has not made a *prima facie* claim for willful
 21 violation of the automatic stay. PHH's MSJ 15, ECF No. 62. This argument
 22 is unfounded. *See* Hoover Amended Complaint ¶¶ 68-69, ECF No. 7 (alleging
 23 actual damages and emotional distress)."

24 (ECF No. 81 at 3, n.2) The ruling appears to be an oversight, but constitutes manifest error.

25 In their motion for summary judgment, Defendants argued that Ms. Hoover could not assert a

26 (9th Cir. Dec. 24, 2019) (weighing Debtor's five years rent free in the Property against
 Debtor and in favor of annulment).

1 claim for violation of the automatic bankruptcy stay because she could not establish that she
 2 had been damaged by the violation. (See Def.'s MSJ, ECF No. 62 at 15.) Defendants further
 3 contended that Ms. Hoover was required to submit evidence sufficient to raise a general issue
 4 of material fact on this issue, and that she had not done so in her Motion for Summary
 5 Judgment. (*Id.*) They also contended that Ms. Hoover could not do so, because she could
 6 not show that PHH or the Trust might not have been granted relief from stay had it asked. *In*
 7 *re Fernandez*, 227 B.R. 174, 180-81 (9th Cir. BAP 1998). Ms. Hoover failed to present any
 8 evidence in response to the argument. Accordingly, this Court's ruling on Defendants'
 9 damages argument was in error, because it allowed Ms. Hoover to rely on allegations in her
 10 Complaint, when Ms. Hoover was required to come forward with affirmative evidence of her
 11 damages. *See, e.g., McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 808-09 (9th Cir.1988).

IV. CONCLUSION

For the reasons set forth above, Defendants requests that this Court reconsider its prior
 decision in this matter.

DATED: February 26, 2021

HOUSER LLP

By: /s/ Emilie K. Edling
 Emilie K. Edling WSBA No. 45042
 eedling@houser-law.com
 Robert W. Norman, Jr. WSBA No. 37094
 bnorman@houser-law.com
*Attorneys for Defendants PHH Mortgage
 Corporation, HSBC Bank USA, N.A., as
 Trustee of the Fieldstone Mortgage
 Investment Trust, Series 2006-2, and
 NewRez, LLC*

CERTIFICATE OF SERVICE

On February 26, 2021, I served the foregoing document(s): DEFENDANTS PHH MORTGAGE CORPORATION, HSBC BANK USA, N.A., AS TRUSTEE, NEW REZ, LLC, AND IH6'S MOTION FOR RECONSIDERATION, in the manner described below:

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Anderson Law of King County, PLLC
787 Maynard Ave S., Suite B
Seattle, WA 98104
Jason@alkc.net

- CM/ECF
- UPS Overnight
- UPS 2 Day Shipping
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- Courier

Counsel for Plaintiff/Debtor

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Counsel for Plaintiff/Debtor

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*Counsel for Quality Loan Service
Corporation of Washington*

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- CM/ECF
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- Email
- Courier

*Counsel for IH6 Property Washington,
L.P.*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 26, 2021

Rachel M. Perez
Rachel M. Perez

Rachel M. Perez

DEFENDANTS' MOTION FOR RECONSIDERATION
AP No. 20-04002-MJH
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HOUSER LLP
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1 THE HONORABLE MARY JO HESTON
2 Chapter 13
3
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8

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

9 In re
10 SARAH HOOVER,
11 Debtor.

Chapter 13
Case No.: 19-42890-MJH
Adversary No.: 20-04002-MJH

13 SARAH HOOVER,
14 Plaintiff,
15 vs.

**DEFENDANTS' NOTICE OF
APPEAL AND STATEMENT OF
ELECTION**

16 QUALITY LOAN SERVICE
17 CORPORATION OF WASHINGTON,
18 PHH MORTGAGE CORPORATION
19 D/B/A PHH MORTGAGE SERVICES,
20 HSBC BANK USA, N.A., AS
21 TRUSTEE OF THE FIELDSTONE
22 MORTGAGE INVESTMENT TRUST,
23 SERIES 2006-2, NEWREZ, LLC, AND
24 IH6 PROPERTY WASHINGTON, L.P.
25 D/B/A INVITATION HOMES

26 Defendants.

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NOTICE OF APPEAL AND STATEMENT OF ELECTION
AP No. 20-04002-MJH
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HOUSER LLP
600 University St., Ste. 1708
Seattle, WA 98101
PH: (206) 596-7838
FAX: (206) 596-7839

Part 1: Identify the appellant(s)

1. Name(s) of appellants: PHH Mortgage Corporation D/B/A PHH Mortgage Services, NewRez, LLC, and HSBC Bank USA, N.A., as Trustee of the Fieldstone Mortgage Investment Trust, Series 2006-2
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

Plaintiff
 Defendant
 Other (describe)

For appeals in a bankruptcy case and not in an adversary proceeding.

Debtor
 Creditor
 Trustee
 Other (describe)

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from: Memorandum Decision on Cross-Motions for Summary Judgment (Doc. 81) and Order on Cross-Motions for Summary Judgment (Doc. 82)
2. State the date on which the judgment, order, or decree was entered: February 8, 2021. The Bankruptcy Court granted an extension of time to appeal to February 26, 2021, pursuant to FRBP 8002(d).

A copy of the Memorandum Decision and Order appealed from is attached hereto.

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys:

22 Party: Sarah Hoover (Plaintiff/Debtor)

23 Attorneys: Christina L. Henry
24 Henry & Degraaff, P.S.
25 787 Maynard Ave S., Suite B
26 Seattle, WA 98104
Telephone: (206) 330-0595
Facsimile: (206) 400-7609
chenry@hdm-legal.com

22 Jason D. Anderson
23 Anderson Santiago, PLLC
24 787 Maynard Ave S., Suite B
25 Seattle, WA 98104
Telephone: (206) 395-2665
Facsimile: N/A
Jason@alkc.net

1 Party: Quality Loan Service Corporation of
2 Washington

3 Attorney: Joseph W. McIntosh
4 McCarthy & Holthus, LLP
5 108 1st Ave South, Suite 300
6 Seattle, WA 98104
7 Telephone: (206) 596-4842
8 Facsimile: N/A
9 jmcintosh@mccarthyholthus.com

10 Party: IH6 Property Washington, L.P.

11 Attorney: John A. McIntosh
12 Schweet Linde & Coulson, PLLC
13 575 S. Michigan St.
14 Seattle, WA 98108
15 Telephone: (206) 381-0118
16 Facsimile: N/A
17 johnm@schweetlaw.com

18 Party: PHH Mortgage Corporation D/B/A PHH
19 Mortgage Services, NewRez, LLC, and
20 HSBC Bank USA, N.A., as Trustee of
21 the Fieldstone Mortgage Investment
22 Trust, Series 2006-2 (Appellants)

23 Attorney: Emilie K. Edling
24 Robert W. Norman, Jr.
25 Houser LLP
26 9600 SW Oak St, Suite 570
Portland, OR 97223
Telephone: (503) 914-1382
Facsimile: (949) 679-1112

19 **Part 4: Optional election to have appeal heard by District Court (applicable only in**
20 **certain districts)**

21 If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate
22 Panel will hear this appeal unless, pursuant to 28 U.S.C. § 168(c)(1), a party elects to have
23 the appeal heard by the United States District Court. If an appellant filing this notice wishes
24 to have the appeal heard by the United States District Court, check below. Do not check the
box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

25 Appellant elects to have the appeal heard by the United States District Court
26 rather than by the Bankruptcy Appellate Panel.

1 **Part 5: Sign below**

2 /s/ Emilie K. Edling

Date: February 26, 2021

3 Signature of attorney for appellant(s)(or
4 appellant(s) if not represented by an attorney

5 Name, address, and telephone number of
6 attorney (or appellant(s) if not represented by
7 an attorney):

8 Emilie K. Edling WSBA No. 45042
eedling@houser-law.com
9 Robert W. Norman, Jr. WSBA No. 37094
bnorman@houser-law.com HOUSER LLP
10 600 University St., Ste. 1708
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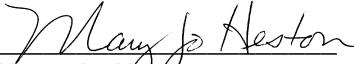
13 Fee waiver notice: If appellant is a child support creditor or its representative and appellant
14 has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is
15 required.

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NOTICE OF APPEAL AND STATEMENT OF ELECTION
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HOUSER LLP
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Below is a Memorandum Decision of
the Court.




Mary Jo Heston
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re:

SARAH HOOVER,

Debtor.

Bk. No. 19-42890

SARAH HOOVER,

Plaintiff,

Adversary No. 20-04002

v.

QUALITY LOAN SERVICE CORPORATION
OF WASHINGTON; PHH MORTGAGE
CORPORATION D/B/A PHH MORTGAGE
SERVICES; HSBC BANK USA, N.A., AS
TRUSTEE OF THE FIELDSTONE
MORTGAGE INVESTMENT TRUST,
SERIES 2006-2; NEWREZ, LLC; AND IH6
PROPERTY WASHINGTON, L.P. D/B/A
INVITATION HOMES,

Defendants.

**MEMORANDUM DECISON ON CROSS-
MOTIONS FOR SUMMARY JUDGMENT**

I. INTRODUCTION.

This adversary proceeding and the pending motions for summary judgment (collectively the "MSJs") involve the impact of the automatic stay on the post-bankruptcy

1 foreclosure sale of the Plaintiff's, Ms. Sarah Hoover ("Ms. Hoover"), family residence located
 2 at 18205 106th Street East, Bonney Lake, Washington (the "Bonney Lake Property"), and
 3 whether each defendant is liable for any violation of the automatic stay.

4 The parties to the MSJs are: (i) Plaintiff-Debtor, Ms. Hoover; (ii) Defendant, PHH
 5 Mortgage Corporation ("PHH"), the special servicer for the loan (the "Loan") secured by the
 6 Bonney Lake Property; (iii) Defendant, NewRez, LLC ("NewRez"), the general servicer of the
 7 Loan; (iv) Defendant, HSBC Bank USA, N.A (the "Trust"), as Trustee of the Fieldstone
 8 Mortgage Investment Trust, Series 2006-2 (the "Beneficiary"); (v) Defendant, Quality Loan
 9 Service Corporation of Washington ("QLS"), the foreclosure trustee; and (vi) Defendant, IH6
 10 Property Washington L.P. ("IH6"), the third-party purchaser at the foreclosure sale.

12 The following motions for summary judgment came before the Court for argument on
 13 November 20, 2020:

14 (1) Ms. Hoover's Motion for Partial Summary Judgment, ECF No. 42 ("Debtor's MSJ"),
 15 seeking a declaration that the foreclosure sale violated the automatic stay and that each
 16 defendant's conduct constitutes a willful violation of the automatic stay;¹

17 (2) QLS's Motion for Summary Judgment seeking dismissal of Ms. Hoover's complaint
 18 for willful violation of the automatic stay with prejudice and its dismissal from the adversary
 19 proceeding, ECF No. 58 ("QLS's MSJ");

21 (3) PHH's, the Trust's, and NewRez's Joint Motion for Summary Judgment seeking
 22 dismissal of Ms. Hoover's complaint for willful violation of the automatic stay with prejudice
 23 and its dismissal from this adversary proceeding, ECF No. 62 ("PHH's MSJ");² and

25 ¹ The Debtor's MSJ defers the issue of compensatory and punitive damages as alleged in the
 Amended Complaint to a future proceeding.

1 (4) IH6's Motion for Summary Judgment seeking dismissal of Ms. Hoover's complaint
 2 for willful violation of the automatic stay with prejudice, its dismissal from this adversary
 3 proceeding, and its motion for annulment of the automatic stay, ECF No. 65 ("IH6's MSJ").³

4 The Court having considered the files, records, evidence, and arguments presented in
 5 connection with the MSJs hereby makes the following findings of fact and conclusions of law.⁴

6 **II. FINDINGS OF FACT.**

7 The following material facts are undisputed, and they are stated generally in
 8 chronological order.

9 **November 25, 2003:** Ali Suleiman signs his valid last will and testament (the "Will")
 10 that contains a pour-over clause placing all his remaining assets and property interests into
 11 the Suleiman Trust. Henry Decl. Ex. A, ECF No. 44.

12 Ali Suleiman created the Ali Suleiman Trust (the "Suleiman Trust"). Hoover Decl. Ex. 1,
 13 ECF No. 43. Ali Suleiman later amends the Suleiman Trust four times on January 4, 2006,
 14 June 2, 2009, March 24, 2011, and March 29, 2014. Hoover Decl. Ex. 1, ECF No. 43. Ali
 15 Suleiman was the original trustor and he named two of his children, Amir Suleiman and Ms.
 16 Hoover, as the Suleiman Trust's successor co-trustees. Hoover Decl. Ex. 1, ECF No. 43.

17 **November 1, 2005:** Ali Suleiman purchases the Bonney Lake Property and he takes
 18 title of the Bonney Lake Property as the fee owner. Moore Decl. Ex. A. ECF No. 63.

22 ² PHH asserts that Ms. Hoover has not alleged or shown any actual damages and therefore
 23 Ms. Hoover has not made a *prima facie* claim for willful violation of the automatic stay. PHH's
 24 MSJ 15, ECF No. 62. This argument is unfounded. See Hoover Amended Complaint ¶¶ 68–
 69, ECF No. 7 (alleging actual damages and emotional distress).

25 ³ PHH joined IH6's Motion to Annul to Automatic Stay. Bankr. No. 19-42890, ECF No. 40.

⁴ All parties have consented to this Court's entry of final orders or judgments in this adversary
 proceeding. See Local Rules W.D. Wash. Bankr. 7012-1(a) and (c); 28 U.S.C. § 157 and
 § 1334(b).

1 **July 25, 2006:** Ali Suleiman, through Ms. Hoover acting as his attorney-in-fact, signs a
 2 30-year \$333,000 note secured by the Bonney Lake Property with Fieldstone Mortgage
 3 Company. Prudent Decl. Ex. 1, ECF No. 64. Later in 2011, Ali Suleiman signs a loan
 4 modification on the note reducing the principal balance to \$213,750.00. Prudent Decl. Ex. 4,
 5 ECF No. 64. Additionally, between 2000 to 2012, Ali Suleiman purchases two other real
 6 properties and conveys them to the Suleiman Trust: 24805 22nd Avenue South, Kent,
 7 Washington 98032 (the “Kent Property”), and 3435 Auburn Way, South #63, Auburn,
 8 Washington 98092 (the “Auburn Property”). See Moore Decl. Exs. B, C, D, E, ECF No. 63. Ali
 9 Suleiman’s son, Amir Suleiman, resides at the Kent Property from approximately 2005 until
 10 2017. Moore Decl. Ex. I, ECF No. 63.

12 **August 27, 2008:** The Bonney Lake Property’s deed of trust is assigned to HSBC and
 13 recorded on September 2, 2008. Prudent Decl. Ex. 3, ECF No. 64. Ocwen Loan Servicing,
 14 LLC, a subsidiary of Ocwen Financial Corporation, (“Ocwen”) serviced the Loan from 2011 to
 15 May 30, 2019. Prudent Decl. ¶ 5, ECF No. 64. PHH, at the time an indirect subsidiary of
 16 Ocwen, began servicing the Loan on June 1, 2019. Prudent Decl. ¶ 5, ECF No. 64.

17 **March 24, 2011:** The Suleiman Trust’s third amendment changes § B.2.3.1 adding
 18 mandatory language about distributing the Bonney Lake Property to Ms. Hoover after Ali
 19 Suleiman’s death:

20 B.2.3.1 Residence. Trustor and the Trust Estate has held title to the
 21 property located at 18205 106th Street East, Bonney Lake,
 22 Washington, and Trustor is currently named as co-signer or Surety
 23 on the primary residence loan executed by Sarah and primary
 24 lender for the purposes of securing financing on said property for
 25 Sarah. Accordingly, as soon as practicable after the death of
 Trustor, Trustee shall distribute any and all interest Trustor, or the
 Trust Estate, may have in that certain residence and real property
 located at 106th Street East, Bonney Lake, Washington, to
 Trustors’ daughter, Sarah V. Hoover, if she is surviving. This

1 distribution shall be in addition to Sarah's distributive share of the
 2 remainder Trust Estate and will carry with it any obligations against
 3 the residence . . . Additionally, to the extent that Trustor or the Trust
 4 Estate is responsible for paying for any or all part of such loan,
 5 such amount shall be considered a loan by Trustor or the Trust
 Estate to Sarah, shall be considered an asset of the Trust and
 specifically allocated to Sarah as a part of her share of the
 remainder Trust."

6 Hoover Decl. Ex. 1, ECF No. 43.

7 **February 24, 2015:** Ali Suleiman dies, Amir Suleiman and Ms. Hoover becomes co-
 8 trustees to the Suleiman Trust, and Mr. Suleiman's death triggers the contingent mandatory
 9 language in § B.2.3.1 making the Bonney Lake Property ready for distribution. Hoover Decl.
 10 Exs. 1 & 2, ECF No. 43.

11 Additionally, in May 2015, as co-trustees of the Suleiman Trust, Amir Suleiman and Ms.
 12 Hoover sell the Auburn Property and convey, via deed, the Auburn Property to a third party.
 13 Moore Decl. Ex. F, ECF No. 63. Then in 2017, the co-trustees of the Suleiman Trust sell the
 14 Kent Property and convey, via deed, the Kent Property to a third party for \$320,000. Moore
 15 Decl. Ex. G, ECF No. 63. The co-trustees split the proceeds equally from both property sales
 16 among Amir Suleiman, Ms. Hoover, and Ali Suleiman's other child. Moore Decl. Ex. I, Amir
 17 Suleiman Dep. 18:2–13, 20:7–10, July 10, 2020, ECF No. 63.

19 **March 2018:** The Loan goes into default. Prudent Decl. ¶ 13, ECF No. 64.

20 **April 9, 2018:** Ocwen sends a notice of default to Ms. Hoover but it is addressed to Ali
 21 Suleiman. Moore Decl. Ex. H, Hoover Dep. 22:19–23:7, ECF No. 63.

22 **August 6, 2018:** Ms. Hoover and her husband, Leo Hoover, submit a non-account
 23 holder authorization form and mortgage assistance application to Ocwen, to explain their
 24 mortgage delinquency and seek assistance. Prudent Decl. Ex. 5, ECF No. 64.
 25

1 **January 2019:** Sony Prudent, as PHH's Federal Rule of Civil Procedure's 30(b)(6)
 2 designee, admits that Ms. Hoover and her brother are both individually authorized third parties
 3 on Ocwen's Bonney Lake Property loan account. Henry Decl. Ex. A, Prudent Dep. 10:16–
 4 11:17, Aug. 12, 2020, ECF No. 73.

5 **January 11, 2019:** Ms. Hoover continues the loss mitigation process attempting to
 6 remedy the mortgage delinquency and properly assume the Loan. Hoover Decl. Ex. 2, ECF
 7 No. 43. Ms. Hoover's efforts to "save [their] home" by working with Ocwen/PHH continue for
 8 months thereafter. See Hoover Decl. ¶ 15–16, ECF No. 43. Ms. Hoover provides Ali
 9 Suleiman's death certificate to Ocwen on January 11, 2019. Hoover Decl. Ex. 2, ECF No. 43;
 10 Henry Decl. Ex. A, Prudent Dep. 39:24–25, Aug. 12, 2020, ECF No. 73.

12 **January 17, 2019:** Ocwen adds Ms. Hoover and her brother, Amir Suleiman, to the
 13 Bonney Lake Property Loan account as trustees of the Suleiman Trust and authorizes them
 14 on this account in their co-trustee capacities. Henry Decl. Ex. A, Prudent Dep. 54:21–55:1,
 15 Aug. 12, 2020, ECF No. 73. Such authorization allows Ms. Hoover and her brother to call
 16 Ocwen, later PHH, and discuss the account. Ex. A, Prudent Dep. 55:2–13, Aug. 12, 2020,
 17 ECF No. 73.

18 **March 14, 2019:** HSBC, which is the Trust, appoints NewRez as its attorney-in-fact to
 19 have, among other things, the authority to pursue any deficiency, debt or other obligation,
 20 secured or unsecured, including but not limited to those arising from foreclosure or other sale.
 21 Henry Supp. Decl. Ex. G, ECF No. 50.

23 **May 9, 2019:** Ocwen, in the process of acquisition by PHH, initiates foreclosure
 24 proceedings against the Bonney Lake Property through its trustee, QLS. Hoover Decl. ¶¶ 17–
 25 19, ECF No. 43. QLS's notice of trustee's sale is addressed to Ms. Hoover personally and

1 schedules the non-judicial foreclosure sale for September 13, 2019. Hoover Decl. ¶¶ 17–19,
 2 ECF No. 43.

3 **May 10, 2019, through September 8, 2019:** Ms. Hoover continues contacting
 4 Ocwen/PHH and QLS attempting to remedy the mortgage delinquency, avoid foreclosure, and
 5 submit paperwork as requested by Ocwen/PHH to become a “confirmed successor in
 6 interest.”⁵ See generally Hoover Decl. ¶¶ 18–40, ECF No. 43. On June 1, 2019, PHH begins
 7 servicing the Loan following the completion of the merger of Ocwen into PHH. Prudent Decl. ¶
 8 5, ECF No. 64; Henry Supp. Decl. Ex. G, ECF No. 50. PHH’s records for the Loan also
 9 include the business records of the Loan’s previous servicers. Prudent Decl. ¶ 5, ECF No. 64.
 10 When Ocwen transferred its servicing of the Loan to PHH, Ocwen incorporated the Loan’s
 11 transaction history and other documents into PHH’s records. Prudent Decl. ¶ 5, ECF No. 64.

13 In June 2019, Ms. Hoover contacts PHH as a confirmed authorized third party on the
 14 Bonney Lake Property loan account. Henry Decl. Ex. A, Prudent Dep. 69:13–17, Aug. 12,
 15 2020, ECF No. 73. Ms. Hoover requests a reinstatement quote from QLS on August 14, 2019.
 16 Hoover Decl. Ex. 6, ECF No. 43. PHH learns that Ali Suleiman is deceased on August 28,
 17 2019. Henry Decl. Ex. A, Prudent Dep 74:1–2, ECF No. 73. On August 30, 2019, PHH
 18 completes its verification that Ms. Hoover is an authorized third party on the Bonney Lake
 19

21
 22 ⁵ See 12 C.F.R. § 1024.31 Definitions (eff. April 19, 2018) (“Confirmed successor in interest
 23 means a successor in interest once a servicer has confirmed the successor in interest’s
 24 identity and ownership interest in a property that secures a mortgage loan subject to this
 25 subpart . . . Successor in interest means a person to whom an ownership interest in a
 property securing a mortgage loan subject to this subpart is transferred from a borrower,
 provided that the transfer is: (1) A transfer by devise, descent, or operation of law on the
 death of a joint tenant or tenant by the entirety; (2) A transfer to a relative resulting from the
 death of a borrower; (3) A transfer where the spouse or children of the borrower become an
 owner of the property”).

1 Property loan account and is the “executor or administrator of the [Ali Suleiman] estate.”
 2 Henry Decl. Ex. A, Prudent Dep 94:4–25, ECF No. 73.

3 After Ms. Hoover and her husband spent months requesting information from
 4 Ocwen/PHH and QLS, QLS sends Ms. Hoover a \$27,695.82 reinstatement quote on
 5 September 4, 2019. Hoover Decl. Ex. 6, ECF No. 43. The September 4, 2019 reinstatement
 6 quote states “[t]he [t]otal [a]mount [d]ue to [r]einstate, listed in the chart below, must be
 7 remitted no later than 9/12/2019.” Hoover Decl. Ex. 6, ECF No. 43. This is nine days before
 8 the scheduled non-judicial foreclosure sale.
 9

10 **September 9, 2019:** Ms. Hoover files a chapter 13 bankruptcy petition with no
 11 schedules (the “Bankruptcy”). Bankr. Case No. 19-42890, ECF No. 1. Ms. Hoover lists PHH
 12 as a creditor on her bankruptcy petition and mailing matrix but not QLS. See, e.g., Hoover
 13 Decl. ¶ 42, ECF No. 43; Bankr. Case No. 19-42890, ECF No. 1. At the time of the Bankruptcy
 14 and the later foreclosure sale, Ms. Hoover, her husband and their two children as well as Ms.
 15 Hoover’s niece and her two children are residing at the Bonney Lake Property. Hoover Decl.
 16 at ¶ 2, ECF No. 25.

17 **September 9, 2019:** PHH receives notice of the Bankruptcy on September 9, 2019, via
 18 fax. Bankr. No. 19-42890, Hoover Decl. Ex. J, ECF No. 25; Henry Decl. Ex. A, Prudent Dep.
 19 85, ECF No. 73.

20 **September 12, 2019:** QLS performs the “[r]equired searches . . . [on] PACER
 21 generated on 09/12/19 – one day before sale . . .” Henry Decl. Stenman Ex. 3, ECF No. 73.
 22 Additionally,

23 [QLS] used LexisNexis Banko[], a third-party vendor, to search for
 24 and identify bankruptcy filings. These searches were specifically
 25 conducted for Sarah Hoover on: 1/31/2019, 2/20/2019, 3/10/2019,
 4/18/2019, 4/24/2019, 5/9/2019, 7/15/2019, 8/9/2019, 9/6/2019,

1 9/12/2019, 9/13/2019, 9/14/2019, 9/16/2019, 9/17/2019, 9/18/2019.
 2 Banko never disclosed this bankruptcy filing in any of its searches.
 3 Quality also confirmed that the social security number it used for
 4 the Debtor in its searches is accurate and the social security
 5 number contained within the records of the loan servicer.

6 Bankr. Case No. 19-42890, Stenman Decl. ¶ 9, ECF No. 20.

7 Ms. Hoover also notifies PHH again, via telephone, of the Bankruptcy on September
 8 12, 2019. Henry Decl. Ex. B, ECF No. 44. There is no record of PHH notifying QLS of the
 9 Bankruptcy before the scheduled non-judicial foreclosure sale.

10 **September 13, 2019:** QLS, as foreclosing trustee, conducts the scheduled non-judicial
 11 foreclosure sale and sells the Bonney Lake Property to IH6 for \$356,000 with surplus funds of
 12 \$167,407 (the “Sale”). Prudent Decl. ¶ 26, ECF No. 64. QLS transfers these surplus funds to
 13 this Court’s registry upon Ms. Hoover’s and the Defendants’ stipulation on May 18, 2020.
 14 Prudent Decl. ¶ 26, ECF No. 64; Order Directing Deposit of Surplus Funds be Placed in a
 15 Non-Interest-Bearing Account in Court Registry Re: Stipulation for Deposit of Surplus Funds
 16 into the Court Registry Pending Further Court Order (ECF No. 15), ECF No. 40; Stipulated
 Statement Deposit of Surplus Funds, ECF No. 15.

17 **September 17, 2019:** QLS signs, notarizes, and delivers the trustee’s deed (the
 18 “Deed”) upon sale to IH6. Bankr. No. 19-42890, Stenman Decl. Ex. D, ECF No. 20.

19 **September 17, 2019:** NewRez executes a limited power of attorney making PHH,
 20 successor by merger to Ocwen, its attorney-in-fact to perform among other things the tasks
 21 related to a foreclosure proceeding. Henry Supp. Decl. Ex. G, ECF No. 50.

22 **September 24, 2019:** QLS receives notice of the Bankruptcy at 11:13 AM for the first
 23 time from Ms. Hoover’s agent, David Miller of Elite Legal Network. Henry Decl. Ex. L,
 24 Stenman Dep. 56:4–23, July 7, 2020, ECF No. 73. Upon learning of the Bankruptcy, QLS

1 does not notify PHH or IH6. Henry Decl. Ex. L, Stenman Dep. 90:7–11, July 7, 2020, ECF No.
 2 73. At 12:46 PM that day, QLS “ran [Ms. Hoover’s] docket and forwarded to [bankruptcy] HUB
 3 for review.” Henry Decl. QLS Ex. 1, ECF No. 73. Jeff Stenman, President of QLS, testifies at
 4 his July 7, 2020 deposition that QLS could not verify Ms. Hoover’s interest in the Bonney Lake
 5 Property relating to the Bankruptcy so QLS did not notify PHH. Bankr. No. 19-42890,
 6 Stenman Decl. ¶ 2, ECF No. 20; Henry Decl. Ex. L, Stenman Dep. 90:1–11, July 7, 2020,
 7 ECF No. 73.

8 **September 25, 2019:** As noted by an IH6 employee, Jacqueline Rumens, IH6’s agent
 9 posts a Notice to Vacate on the Bonney Lake Property. Henry Decl. IH6 Ex. 1, ECF No. 73 at
 10 2.

12 **September 26, 2019:** IH6 records the Deed in Pierce County, Washington (recording
 13 No. 2019092660566). Bankr. No. 19-42890, Stenman Decl. Ex. D, ECF No. 20. The
 14 Bankruptcy is dismissed the same day for failure to file schedules, statements, lists, or a
 15 chapter 13 plan. Bankr. No. 19-42890, ECF No. 14.

16 **October 2, 2019:** The Bankruptcy is closed. Bankr. No. 19-42890.

17 **October 3, 2019:** Ms. Rumens leaves a voicemail for Ms. Hoover “to discuss her
 18 options.” Henry Decl. IH6 Ex. 1, ECF No. 73.

19 **November 16, 2019:** Ms. Hoover emails Ms. Rumens about the Bonney Lake Property
 20 saying she “would like to try and make arrangements” with IH6, and Ms. Hoover provides her
 21 contact information explaining she is available by phone, text, or email. Henry Decl. IH6 Ex. 1,
 22 ECF No. 73.

24 **November 18, 2019:** Ms. Rumens emails Ms. Hoover at 12:06 PM about renting the
 25 home:

1 . . . If you are interested in renting the home the first step would be
 2 to have a house inspection completed to make sure the home is
 3 safe and functional. Once that is completed and determined good
 4 to move forward, I would need any person 18 or over to complete
 5 the attached application and provide a copy of a government issued
 6 ID, along with the last 4 weeks of paystubs. Each application has a
 7 \$50 fee associated with it. Upon approval, the deposit along with
 8 the move in monies would be due along with signing a lease. The
 9 rent is \$2350.00 for 12 months. If you have pets, there is a \$250
 10 non-refundable pet fee per pet, along with \$35.00 for pet rent a
 11 month

12 Henry Decl. IH6 Ex. 1, ECF No. 73.

13 **November 26, 2019:** IH6 receives notice of the Bankruptcy via a letter dated
 14 November 22, 2019. Bankr. No. 19-42890, Lappano Decl. ¶ 8, ECF No. 19. The time that IH6
 15 received the letter on November 26, 2019, is unknown. The same day, Ms. Rumens emails
 16 Ms. Hoover and leaves her a voicemail; Ms. Rumens states in her email "If you are wanting to
 17 apply to rent the home [from IH6], we will need to get the inspection done as soon as
 18 possible." Henry Decl. IH6 Ex. 1, ECF No. 73.

19 **December 24, 2019:** PHH formally approves Ms. Hoover as the "confirmed successor
 20 in interest" on the Loan. Prudent Decl. ¶ 27, ECF No. 64.

21 **January 10, 2020:** IH6 files a motion to reopen Ms. Hoover's chapter 13 case and a
 22 motion to annul the automatic stay for the Bonney Lake Property. Bankr. No. 19-42890, ECF
 23 Nos. 17, 18 (the "Annulment Motion"). The Court reopens the Bankruptcy on February 14,
 24 2020. Bankr. No. 19-42890, ECF No. 37.

1 **January 25, 2020:** Ms. Hoover, through counsel, files a one-count complaint against
 2 PHH, QLS, and IH6 for willful violation of the automatic stay under 11 U.S.C. § 362(k)(1).⁶
 3 ECF No. 1; Bankr. No. 19-42890, ECF No. 23.

4 **February 20, 2020:** PHH joins IH6's Annulment Motion. Bankr. No. 19-42890, ECF No.
 5 40.

6 **March 3, 2020:** The Court enters an order in the Bankruptcy consolidating the
 7 Annulment Motion into the Adversary Proceeding. Bankr. No. 19-42890, ECF No.44.

8 **March 2020:** Ms. Hoover begins sending \$2,200 per month, the amount of the monthly
 9 mortgage payment, to her attorney's trust account to prevent her from falling further behind on
 10 the Loan. Henry Decl. Ex. J, ECF No. 73.

12 **III. DISCUSSION AND CONCLUSIONS OF LAW.**

13 **A. Jurisdiction.**

14 The Court has jurisdiction over the pending motions and adversary proceeding under
 15 28 U.S.C. § 1334(b), and the motions and adversary proceeding are core matters under 28
 16 U.S.C. § 157(b).

17 **B. Summary Judgment Standard.**

18 The party seeking summary judgment bears the burden of demonstrating that there are
 19 no genuine issues of material fact and that the movant is entitled to judgment as a matter of
 20 law. Fed. R. Civ. P. 56(a), made applicable by Rule 7056; *Celotex Corp. v. Catrett*, 477 U.S.
 21 317, 322–23, 106 S. Ct. 2548 (1986). Summary judgment should be granted if, after taking all
 22 reasonable factual inferences in the nonmoving party's favor, the court finds that no

24

25 ⁶ Unless otherwise indicated, all chapter, section and rule references are to the Federal
 Bankruptcy Code, 11 U.S.C. §§ 101–1532, and to the Federal Rules of Bankruptcy
 Procedure, Rules 1001–9037.

1 reasonable jury could find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
 2 242, 255, 106 S. Ct. 2505 (1986). The responding party must present affirmative evidence to
 3 defeat a properly supported motion for summary judgment. The responding party may not rest
 4 upon mere allegations or denials of its pleadings but must set forth specific facts showing that
 5 there is a genuine issue for trial. *Liberty Lobby*, 477 U.S. at 256. The burden is on the moving
 6 party to demonstrate it is entitled to summary judgment as a matter of law. *Stanley v. Novartis*
 7 *Pharm. Corp.*, 11 F. Supp. 3d 987, 994 (C.D. Cal. 2014) (citing *Margolis v. Ryan*, 140 F.3d
 8 850, 852 (9th Cir.1998)). "The moving party bears the initial burden of identifying the elements
 9 of the claim or defense and evidence that it believes demonstrates the absence of an issue of
 10 material fact." *Stanley*, 11 F. Supp. at 994 (citing *Celotex*, 477 U.S. at 323).

12 "[W]hen simultaneous cross-motions for summary judgment on the same claim are
 13 before the court, the court must consider the appropriate evidentiary material identified and
 14 submitted in support of both motions, and in opposition to both motions, before ruling on each
 15 of them." *Tulalip Tribes of Wash. v. Washington*, 783 F.3d 1151, 1156 (9th Cir. 2015) (quoting
 16 *Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134 (9th Cir.
 17 2001)); see also 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*
 18 § 2720 (4th ed.) ("The court must rule on each party's motion on an individual and separate
 19 basis, determining, for each side, whether a judgment may be entered in accordance with the
 20 Rule 56 standard."); see also *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 790–91 (9th
 21 Cir. 2006) ("We evaluate each motion separately, giving the nonmoving party in each instance
 22 the benefit of all reasonable inferences.") (citations and internal quotation marks omitted).

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1 **C. The Sale Violated the Automatic Stay and the Sale is Void.**

2 **1. The Parties' Arguments on the Automatic Stay's Impact on the Sale.⁷**

3 Ms. Hoover asserts that the Sale violated one or more of the following provisions of the
 4 automatic stay, § 362(a)(3), (4), (5), or (6), because the Bankruptcy was pending during the
 5 Sale and she held an interest in the Bonney Lake Property that was property of her
 6 bankruptcy estate. Generally, these subsections of § 362(a) prohibit acts to obtain possession
 7 of, to exercise control over, or to enforce a lien against property of the estate or alternatively
 8 to pursue a pre-petition debt against property of the debtor. § 362(a)(3), (4), (5), and (6).

9
 10 PHH asserts that the nature of Ms. Hoover's interest in her residence is not protected
 11 under the automatic stay because: 1) she was not obligated on the Loan; 2) she was not
 12 named on the Bonney Lake Property's title; 3) she was not a "confirmed successor in interest"
 13 in PHH's records; and 4) the Bonney Lake Property was held in a spendthrift trust that is
 14 excluded from being property of the estate under § 541(c)(2). IH6 takes a similar view
 15 concerning the nature of Ms. Hoover's interest in the Bonney Lake Property.

16 **2. Ms. Hoover's Interest in the Bonney Lake Property on the Date of the Sale
 17 was Property of the Estate Under § 541.**

18 **a. What Constitutes a Legal or Equitable Interest is Broadly Construed.**

19 Section 541(a)(1) provides generally that except for subsections (b) and (c)(2), the
 20 commencement of a bankruptcy case creates an estate comprised of "all legal or equitable
 21 interests of the debtor in property as of the commencement of the case." § 541(a)(1). What
 22 constitutes a debtor's "legal or equitable interest" is broadly construed. *United States v.*

23
 24 ⁷ QLS's MSJ does not address the issue of whether the Sale violated the automatic stay but
 25 instead argues that its actions under these facts do not constitute a willful violation of the stay,
 which is addressed later. See *infra* Discussion § G.

1 *Whiting Pools, Inc.*, 462 U.S. 198, 204 (1983) (citing H.R. REP. No. 95-595, at 367 (1977); S.
 2 REP. No. 95-989, at 82 (1978), as reprinted in 1978 U.S.C.C.A.N. 5868, 6323 (“The scope of
 3 this paragraph [§ 541(a)(1)] is broad. It includes all kinds of property, including tangible or
 4 intangible property, causes of action (see Bankruptcy Act § 70a(6)), and all other forms of
 5 property currently specified in section 70a of the Bankruptcy Act.”)). Furthermore, such legal
 6 and equitable interests are property of the estate wherever they are located and by whomever
 7 they are held (e.g., debtor or non-debtor). § 541(a).

8 Neither PHH nor IH6 dispute that Ms. Hoover held an *interest* in the Bonney Lake
 9 Property as of the date of the Sale. They also do not challenge the unambiguous language in
 10 the Will and Suleiman Trust provisions, which directed the Bonney Lake Property transfer first
 11 to the Suleiman Trust upon Mr. Suleiman’s death and then clearly directed the co-trustees to
 12 transfer the Bonney Lake Property to Ms. Hoover “as soon as practicable” so long as she is
 13 surviving. See Hoover Decl. Ex. 1, ECF No. 43 (referring to the Suleiman Trust’s third
 14 amendment § B.2.3.1). Instead, PHH and IH6 argue that Ms. Hoover’s interest is not an
 15 interest in estate property largely because of irrelevant technicalities with title, successor in
 16 interest status, and failing to properly assume the Loan, which misconstrue the scope of
 17 § 541(a)(1). Accordingly, it is undisputed that Ms. Hoover held an interest in the Bonney Lake
 18 Property at the time of the Bankruptcy under § 541(a)(1).

20 Therefore, the remaining issue is whether such interest is excluded from the estate
 21 because it falls within the exception contained in § 541(c)(2).

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b. Ms. Hoover's Interest in the Bonney Lake Property is Not Excluded from the Estate Under § 541(c)(2).

PHH and IH6 argue that the spendthrift provisions of the Suleiman Trust are restrictions on transfer, excluding the Bonney Lake Property from property of the estate under § 541(c).

Section 541(c)(1) generally states that except as provided in § 541(c)(2), property is property of the estate under § 541(a)(1), (2), and (5) even where there are restrictions or conditions on a debtor's transfer of such a property interest. Section 541(c)(2) thereafter provides that “[a] restriction on the transfer of a beneficial interest of the debtor in a trust **that is enforceable under applicable nonbankruptcy law** is enforceable in a case under this title.” § 541(c)(2) (emphasis added). In this case, given the nature of the trust at issue and the Suleiman Trust's choice of law provision, Washington State law is the “applicable nonbankruptcy law” to determine whether the spendthrift provisions of the Suleiman Trust are enforceable.

Spendthrift trust provisions in Washington State only protect trust assets where the beneficial asset has not yet accrued. In Washington State, creditors can seize only the portion of a spendthrift trust that has accrued and is ready for distribution to the beneficiary. *Knettle v. Knettle*, 197 Wash. 225, 227–28, 84 P.2d 996, 997 (1938). The bankruptcy court has relied on this provision in the past in determining whether spendthrift trust property is property of the estate. See *Garrett v. Finley (In re Finley)*, 286 B.R. 163, 166 (Bankr. W.D. Wash. 2002). “This rule is contrary to the rule in the majority of jurisdictions that does not permit a creditor to reach a beneficiary’s interest until it is actually paid to the beneficiary.” *In re Finley*, 286 B.R. at 166. Thus, any accrued portions of a trust (i.e., ready for distribution) are subject to creditor

1 seizure under Washington State law and, therefore, are part of the bankruptcy estate. *Finley*,
 2 286 B.R. at 166; *Knettle*, 197 Wash. at 227–28, 84 P.2d at 997.

3 The undisputed facts show that Ms. Hoover's interest in the Bonney Lake Property had
 4 accrued as of the date of the Bankruptcy's petition based on the provisions of the Will and the
 5 Suleiman Trust that triggered upon Mr. Suleiman's death. First, the Will's pour-over provision
 6 devised all his interests in the Bonney Lake Property to the Suleiman Trust. Second, the
 7 Suleiman Trust's third amendment contained mandatory conveyance language to distribute all
 8 interests that the Suleiman Trust has in the Bonney Lake Property to Ms. Hoover as soon as
 9 practicable after his death. Hoover Decl. Ex. 1, ECF No. 43. Since spendthrift provisions in
 10 Washington State only protect trust assets where the beneficial asset has not yet accrued,
 11 see *Finley*, 286 B.R. at 166, and *Knettle*, 197 Wash. at 227–28, 84 P.2d at 997, the Suleiman
 12 Trust's spendthrift provision is not enforceable under Washington State law. Accordingly, Ms.
 13 Hoover's interest in the Bonney Lake Property is not excluded from the estate under
 14 § 541(c)(2).

16 **3. The Sale Violated § 362(a)(3) & (4) and is Void.**

17 Ms. Hoover filed the Bankruptcy on September 9, 2019, Bankr. No. 19-42890, ECF
 18 No. 1, and the Sale occurred on September 13, 2019, Prudent Decl. ¶ 26, ECF No. 64. The
 19 Sale clearly constitutes an act to both enforce a lien and to take possession and control of
 20 property of the estate in violation of § 362(a)(3) and (4). Accordingly, based on the undisputed
 21 facts in this case, the Sale is void. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992).

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1 **D. The Facts of this Case Do Not Support Annulment.**

2 **1. Annulment Standards Generally.**

3 PHH and IH6 jointly seek to annul the automatic stay under § 362(d) in order to
 4 retroactively validate the void post-bankruptcy Sale. See *generally Lone Star Sec. & Video,*
 5 *Inc. v. Gurrola (In re Gurrola)*, 328 B.R. 158, 172 (9th Cir. BAP 2005) (explaining that
 6 annulment “has the effect of retroactively validating acts that otherwise violated the stay.”). In
 7 general, although the debtor has the burden of proving that “cause” does not exist to annul the
 8 stay under § 362(d)(1) and 362(g)(2), bankruptcy courts have wide latitude in balancing the
 9 equities under the facts of a particular case. See *Natl Env't Waste Corp. v. City of Riverside*
 10 (*In re Natl. Env't Waste Corp.*), 129 F.3d 1052, 1055 (9th Cir. 1997); *Fjeldsted v. Lien (In re*
 11 *Fjeldsted)*, 293 B.R. 12, 24 (9th Cir. BAP 2003).

13 In balancing the equities to determine if cause exists, bankruptcy courts have applied
 14 the following factors, as applicable to the facts of a particular case:

- 15 1. Number of filings;
- 16 2. Whether, in a repeat filing case, the circumstances indicate an
 intention to delay and hinder creditors;
- 17 3. A weighing of the extent of prejudice to creditors or third parties if
 the stay relief is not made retroactive, including whether harm
 exists to a bona fide purchaser;
- 18 4. The debtor's overall good faith under totality of circumstances
 test: *cf. Fid. & Cas. Co. of N.Y. v. Warren (In re Warren)*, 89 B.R.
 87, 93 (9th Cir. BAP 1988) (chapter 13 good faith);
- 19 5. Whether creditors knew of stay but nonetheless took action, thus
 compounding the problem;
- 20 6. Whether the debtor has complied, and is otherwise complying,
 with the Bankruptcy Code and Rules;
- 21 7. The relative ease of restoring parties to the status quo ante;
- 22 8. The costs of annulment to debtors and creditors;
- 23 9. How quickly creditors moved for annulment, or how quickly
 debtors moved to set aside the sale or violative conduct;
- 24 10. Whether, after learning of the bankruptcy, creditors proceeded
 to take steps in continued violation of the stay, or whether they
 moved expeditiously to gain relief;

1 11. Whether annulment of the stay will cause irreparable injury to
 2 the debtor;
 3 12. Whether stay relief will promote judicial economy or other
 4 efficiencies.

5 *Fjeldsted*, 293 B.R. 12, 25 (collectively the “Annulment Factors”). The Annulment Factors “are
 6 merely a framework for analysis and not a scorecard,” and “[i]n any given case, one factor
 7 may so outweigh the others as to be dispositive.” *Fjeldsted*, 293 B.R. at 25.

8 **2. The Balance of the Equities in This Case Does Not Support Stay
 9 Annulment.**

10 Several of the Annulment Factors—Annulment Factors 1, 2, & 6—look at the debtor’s
 11 filing history and compliance with the Bankruptcy Code and Rules. Ms. Hoover is not a serial
 12 filer abusing the imposition of the stay through multiple filings. She filed only one bankruptcy
 13 case for the purpose of stopping the Sale. When the Sale proceeded despite the automatic
 14 stay, she did not oppose dismissing the case for failure to file schedules, statements, lists, or
 15 a chapter 13 plan. See Bankr. No. 19-42890, ECF No. 14. Additionally, Ms. Hoover is
 16 continuing to place the monthly payment amount for the Bonney Lake Property in her
 17 attorney’s trust account pending this Court’s decision and the filing of a chapter 13 plan to
 18 address remaining unpaid obligations to the Beneficiary under the Loan. These factors do not
 19 support annulment as they show that Ms. Hoover is not abusing the bankruptcy system.

20 In balancing the equities, courts look at the general good faith or lack of good faith of
 21 the debtor and the creditors, both generally and in connection with the stay violation—
 22 Annulment Factors 4, 9, & 10. PHH and IH6 allege that Ms. Hoover’s failure to transfer title to
 23 the Bonney Lake Property shows a lack of good faith in light of Ms. Hoover’s and her
 24 husband’s prior real estate experience and their transfer of the Kent and Auburn Properties
 25 from the Suleiman Trust. The record, however, does not support a finding of bad faith under

1 these facts and circumstances. Under the terms of the Suleiman Trust, the co-trustees were
 2 directed to sell the Kent and Auburn Properties, necessitating the transfer of title upon such
 3 sale. The Suleiman Trust, however, treated the Bonney Lake Property differently—this
 4 property was to be transferred “as soon as practicable” to Ms. Hoover after Ali Suleiman’s
 5 death. See Hoover Decl. Ex. 1, ECF No. 43. While the title transfer never happened, the
 6 record clearly supports Ms. Hoover’s multiple good faith dealings with Ocwen, PHH, NewRez,
 7 and QLS regarding the Bonney Lake Property when she provided the necessary paperwork to
 8 notify the Beneficiary and its servicers of her father’s death, and she provided the terms of the
 9 Will and Suleiman Trust and the documentation to assume or seek the Loan’s modification.
 10 Also, Ms. Hoover tried resolving the foreclosure proceeding before the Sale and to otherwise
 11 resolve all issues related to the Bonney Lake Property in good faith.

13 In contrast, PHH’s actions—one of the moving parties—shows a complete disregard
 14 for the automatic stay and Ms. Hoover’s rights by failing to stop the Sale *despite receiving*
 15 *notice* of the Bankruptcy both four days and one day before the Sale. Such notice, by both fax
 16 and telephone, provided more than sufficient time for PHH to stop the Sale, yet PHH chose
 17 not to. At the same time, the other moving party, IH6, took, at a minimum, 45 days to file the
 18 Annulment Motion. While the earliest date of IH6’s knowledge of the Bankruptcy is in dispute,
 19 it is undisputed through IH6’s admission that IH6 was aware of the Bankruptcy at least as of
 20 November 26, 2019. Even so, IH6 waited until January 10, 2020, to file the Annulment Motion.

22 The final Annulment Factors compare the relative harm to the parties as well as the
 23 costs and ease of returning the affected parties to the *status quo ante* after an annulment of
 24 the stay—Annulment Factors 3, 7, 8, & 11. These relative harm factors are the most

1 significant factors in balancing the equities between IH6 and PHH, and Ms. Hoover in this
2 case.

3 Here, if annulment is granted, IH6, as a third-party purchaser for investment purposes,
4 would likely take advantage of a business opportunity and could rent and later sell the Bonney
5 Lake Property to a third party for profit. Without annulment, the sale would be void and IH6
6 would lose this money-making opportunity. PHH also would benefit from annulment as it could
7 then be paid in full with the funds currently held in the court registry. Without annulment, any
8 prejudice to PHH would be minimal, however, because PHH would receive the monthly
9 mortgage payments that Ms. Hoover has remitted to her attorney's trust account throughout
10 the pendency of this litigation. Although there may be delay in curing any arrears on the Loan
11 if Ms. Hoover files another chapter 13, the record here shows there is at least \$167,000 of
12 equity in the Bonney Lake Property, which will adequately protect PHH.

14 In contrast, if annulment is granted, Ms. Hoover and the seven other family members
15 who live at the Bonney Lake Property (i.e., her husband, her two children, her niece, and the
16 niece's three young children) would lose their family home and be required to move to another
17 dwelling. See Bankr. No. 19-42890, Hoover Decl. ¶ 2, ECF No. 25. At a minimum, annulment
18 would cause Ms. Hoover and her family financial harm, including relocation costs and costs of
19 deposits or down payments on new residences (even assuming both families would be able to
20 find affordable accommodations); physical dislocation; and likely significant emotional
21 distress. Furthermore, these costs would be exacerbated by the ongoing global COVID-19
22 pandemic. As such, relative harm factors strongly weigh in favor of Ms. Hoover and not
23 granting annulment.

1 From the undisputed facts, this Court finds that factors one, two, four, five, six, seven,
 2 eight, nine, ten, and eleven favor Ms. Hoover. These are the most important Annulment
 3 Factors under these facts, which tilt the scales of justice in Ms. Hoover's favor because of the
 4 balance of harm discussed above. Balancing the equities and considering the totality of the
 5 circumstances here, the Court denies IH6's motion, and PHH's joinder, to annul the automatic
 6 stay.

7 Having found the Sale violated the stay, the Sale is void, and annulment is not
 8 warranted here, the Court now turns to whether the each of the Defendants' actions in relation
 9 to the foregoing stay violations and the Sale constitute a willful violation of the stay entitling
 10 Ms. Hoover to prove damages under § 362(k) at a later proceeding.⁸

12 **E. PHH, NewRez, and the Trust are Liable for Willfully Violating the Stay.**

13 **1. PHH was the Agent of NewRez and the Trust When It Conducted the Sale.**

14 The record shows that the Trust delegated authority to NewRez under a power of
 15 attorney to have authority to pursue, among other things, a foreclosure or other sale of the
 16 Bonney Lake Property. Following the merger of PHH and Ocwen, NewRez delegated the
 17 authority under a limited power of attorney to PHH to take certain such actions in connection
 18 with a foreclosure sale. See Henry Supp. Decl. Ex. G 2–6, ECF No. 50.

19 “A power of attorney is a written instrument by which one person as principal appoints
 20 another as agent and confers on the agent’s authority to act in the place and stead of the
 21 principal for the purposes set forth in the instrument.” *Winters v. Quality Loan Serv. Corp*, 11
 22 Wn. App. 2d 628, 646, 454 P.3d 896, 906 (Wash. Ct. App. 2019) (citing *Bryant v. Bryant*, 125

24

25 ⁸ Under § 362(k)(1), “an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” § 362(k)(1).

1 Wn.2d 113, 118, 882 P.2d 169, 171 (1994)). Additionally, the Uniform Power of Attorney Act,
 2 chapter 11.125, defines an agent as follows:

3 [A] person granted authority to act for a principal under a power of
 4 attorney, whether denominated an agent, attorney-in-fact, or
 5 otherwise. The term includes an original agent, coagent, successor
 6 agent, and a person to which an agent's authority is delegated.

7 Wash. Rev. Code ("RCW") § 11.125.020(1).

8 The scope of the two powers of attorney clearly encompass the actions of PHH and
 9 NewRez taken under their delegated authority "[t]o pursue any . . . debt or other obligation . . .
 10 arising from foreclosure or other sale[;]" conduct the Sale or discontinue the Sale; appear in
 11 bankruptcy cases; and execute documents related to the Sale. See Henry Supp. Decl. Ex. G
 12 2–6, ECF No. 50. Thus, PHH was an agent of NewRez and the Trust, and PHH had authority
 13 to bind them both as principals to its actions relating to the Sale.⁹ Furthermore, PHH's role as
 14 an agent of NewRez and the Trust meets the clear definition of "agent" in RCW
 15 § 11.125.020(1).

16 **2. PHH's Actions and Failures to Act in Connection with the Sale are Willful
 17 Violations of the Stay Under Applicable Ninth Circuit Law.**

18 Whether PHH or the other Defendants willfully violated the automatic stay is a question
 19 of fact. *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1213 (9th Cir. 2002). The Ninth
 20 Circuit's test for willful automatic stay violations under § 362(k)(1) requires a showing that: (1)
 21 the creditor knew of the automatic stay, and (2) the actions in violation of the stay were
 22 intentional acts or failures to act in remedying the violation. *In re Dyer*, 322 F.3d 1178, 1192
 23 (9th Cir. 2003); *Eskanos*, 309 F.3d at 1215; *In re Bloom*, 875 F.2d 224, 227 (9th Cir. 1989).
 24 No specific intent is required; a good faith belief that the stay is not being violated "is not

25 ⁹ Accordingly, hereafter, references to PHH's actions shall be deemed to apply to NewRez and the Trust.

1 relevant to whether the act was ‘willful’ or whether compensation must be awarded.” *Johnston*
 2 *Envt'l Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 618 (9th Cir. 1993).

3 Furthermore, the Ninth Circuit imposes a duty on a creditor with knowledge of a
 4 bankruptcy filing to remedy the stay violations and undo its acts that violate the automatic
 5 stay. See *Dyer*, 322 F.3d at 1192 (holding that when a creditor has knowledge of a violation of
 6 the automatic stay, that creditor has an affirmative duty to undo the violation); *Rediger Inv.*
 7 *Corp. v. H Granados Commc'ns, Inc. (In re H Granados Commc'ns, Inc.)*, 503 B.R. 726, 737
 8 (9th Cir. BAP 2013) (explaining that once a creditor and its counsel are aware of a debtor's
 9 bankruptcy, the onus is on the creditor to cease all efforts related to the debtor in its pending
 10 state-court action without further order from the bankruptcy court and to remedy the impact of
 11 existing stay violations); *Copeland v. Kandi (In re Copeland)*, 441 B.R. 352, 360 (Bankr. W.D.
 12 Wash. 2010) (failing to take reasonable steps to remedy an action that violates the stay is a
 13 continuing stay violation). A creditor's liability under § 362(k)(1) continues until full restitution is
 14 made or, if after expiration of the stay, until the court orders full restitution. *In re LeGrand*, 612
 15 B.R. 604, 612 (Bankr. E.D. Cal. 2020) (citing *Snowden v. Check Into Cash of Wash., Inc. (In*
 16 *re Snowden)*, 769 F.3d 651, 659 & 662 (9th Cir. 2014); *Sundquist v. Bank of America, N.A. (In*
 17 *re Sundquist)*, 566 B.R. 563, 586 (Bankr. E.D. Cal. 2017)).

19 There is no genuine dispute of material fact that PHH had notice of the Bankruptcy on
 20 September 9, 2019, via fax. Bankr. No. 19-42890, Hoover Decl. Ex. J, ECF No. 26; Henry
 21 Decl. Ex. A, Prudent Dep. 84, Aug. 12, 2020, ECF No. 73. PHH also received additional
 22 notice of the Bankruptcy before the Sale on September 12, 2019. Henry Decl. Ex. B, ECF No.
 23 44. Despite PHH receiving these notices before the Sale, PHH did nothing. Before the Sale, it
 24 did not inform QLS, the foreclosure trustee conducting the Sale, or any potential purchasers at

1 the Sale, including IH6, of the Bankruptcy. PHH's failure to act allowed QLS to sell the Bonney
 2 Lake Property at the Sale to a third-party purchaser, allowed the Deed to be transferred to
 3 that purchaser, and allowed that purchaser to record the Deed. This all occurred while the
 4 automatic stay was in effect. PHH sat on the information and did not take any steps to rectify
 5 its stay violation until it joined IH6's Motion to Annul the Automatic Stay on February 20,
 6 2020—160 days after the Sale. See Bankr. No. 19-42890, ECF No. 40.

7 Under these undisputed facts, PHH willfully violated the automatic stay. See, e.g.,
 8 *Burton v. Infinity Capital Mgmt.*, 862 F.3d 740, 747 (9th Cir. 2017) (explaining that a party that
 9 fails to at least alert the court of potential conflicts between an order and the automatic stay
 10 does not satisfy a non-debtor's affirmative duty of compliance). PHH knew that the automatic
 11 stay existed, and it bears responsibility for any violations caused by its intentional actions (or
 12 inactions) until the sale is rescinded and title is restored to Ms. Hoover, regardless of whether
 13 it specifically intended such actions to violate the stay. See, e.g., *Goodman*, 991 F.2d at 618.
 14 In doing so, PHH also was acting on behalf of NewRez and the Trust. Accordingly, the
 15 Debtor's MSJ is granted regarding PHH, NewRez, and the Trust, and PHH's MSJ is denied.

16 **F. A Material Issue of Fact Exists on When IH6 Received Notice of the Bankruptcy and
 17 Prevents Granting Summary Judgment to Either Ms. Hoover or IH6.**

18 The next issue is whether either Ms. Hoover or IH6 is entitled to summary judgment as
 19 a matter of law on the issue of whether IH6 willfully violated the automatic stay. As noted
 20 above, it is undisputed that IH6 did not know of the Bankruptcy until after it purchased the
 21 Bonney Lake Property and after QLS delivered the Deed on September 17, 2019, see Bankr.
 22 No. 19-42890, Stenman Decl. Ex. D, ECF No. 20. As explained more fully below, there is a
 23 dispute, however, about when IH6 thereafter acquired knowledge of the Bankruptcy. This fact
 24 is material to the Court's determination of whether IH6 willfully violated the stay.

1 IH6 asserts that it was first notified of the Bankruptcy on November 26, 2019, when it
 2 received a letter from Ms. Henry dated November 22, 2019, about the Sale's violation of the
 3 automatic stay. See Bankr. No. 19-42890, Lappano Decl. Ex. C ¶¶ 7-8, ECF No. 19. Ms.
 4 Hoover alleges, however, that IH6 knew about the Bankruptcy significantly earlier.
 5 Specifically, Ms. Hoover alleges the following three earlier dates that IH6 received notice of
 6 the Bankruptcy: (1) September 24, 2019: Elite Legal Network notified IH6 on Ms. Hoover's
 7 behalf, Bankr. No. 19-42890, Hoover Decl. ¶ 49, ECF No. 25; (2) October 1, 2019: Ms.
 8 Hoover said "I spoke to Michael Lappano at IH6. I believe this was on October 1, 2019. I
 9 informed him that I had filed bankruptcy. Mr. Lappano indicated that he would have no
 10 problem selling my house back to me, but that he would require QLS to pay an additional
 11 \$100,000 above IH6's purchase price at the foreclosure sale." Hoover Decl. ¶ 53, ECF No. 43;
 12 and (3) October 23, 2019: QLS's General Counsel, Robert McDonald, states in a
 13 timestamped email that the "third[-]party purchaser aware[sic] of bankruptcy filing and did not
 14 want sale unwound. He has been advised to seek confirmation of sale in BK – not sure if he
 15 did that or not. I will contact him now for an update." Henry Decl. QLS Ex. 1, ECF No. 73.¹⁰

16 For purposes of both Ms. Hoover's and IH6's MSJs, it is undisputed that between
 17 September 17, 2019 (the date IH6 received the Deed), and November 26, 2019 (the date IH6
 18 received notice of the Bankruptcy), IH6 representatives recorded the Deed, on September 26,
 19 2019.¹¹ It is also undisputed that during this period, IH6's representatives had several

21
 22 ¹⁰ Each of the foregoing allegations has potential evidentiary issues, particularly hearsay
 23 issues or a lack of foundation that prevent the Court from relying on them for purposes of
 24 summary judgment. See *Beyene v. Coleman Sec. Servs., Inc.*, 854 F.2d 1179, 1181 (9th Cir.
 25 1988) (stating a trial court can only consider admissible evidence in ruling on a motion for
 summary judgment). These issues could be addressed at trial through additional evidence or
 testimony.

¹¹ The Court dismissed the Bankruptcy on the same day. The relative timing of these two
 events is not clear from the record.

1 interactions with Ms. Hoover where they offered to sell or rent the Bonney Lake Property to
 2 her.

3 Taking the facts in the light most favorable to IH6 in connection with Ms. Hoover's MSJ,
 4 IH6 first learned of the Bankruptcy on November 26, 2019. Additionally, IH6's representatives
 5 had their last interaction with Ms. Hoover on that same date, halting all actions against Ms.
 6 Hoover and the Bonney Lake Property after learning of the Bankruptcy.¹² These facts, if
 7 undisputed, would support a determination that IH6 did not willfully violate the automatic stay.

8 On the other hand, if the Court takes the facts in the light most favorable to Ms. Hoover
 9 in connection with IH6's MSJ, IH6 was informed about the Bankruptcy as early as September
 10 24, 2019. Despite this knowledge, IH6 recorded the Deed on September 26, 2019.
 11 Additionally, IH6's representatives thereafter contacted Ms. Hoover several times about
 12 selling or renting the Bonney Lake Property to her. These facts, if undisputed, would support a
 13 determination that IH6 willfully violated the automatic stay.

14 Based on the record before it, the Court finds that issues of material fact exist about
 15 when IH6 learned of the Bankruptcy and whether IH6 took any actions with respect to the
 16 Bonney Lake Property thereafter that constitute a willful violation of the stay. Accordingly, the
 17 Court must deny both Ms. Hoover's MSJ and IH6's MSJ on the claim that IH6 willfully violated
 18 the automatic stay.¹³

19 ///

20

21 ¹² Ms. Hoover alleges that on the date IH6 admits to receiving notice, November 26, 2019, a
 22 representative of IH6 contacted Ms. Hoover about rent. Again, the record is not clear about
 23 the relative timing between these two events. Additionally, Mr. Lappano's Declaration
 24 indicates that "[a]fter receiving notice of Sara's [sic] Hoover's claim that the trustee's sale
 25 violated the automatic stay, IH6 Property immediately put a hold on its Unlawful Detainer
 action and retained counsel to address Sarah Hoover's claim in the bankruptcy." See
 Lappano Decl. ¶¶ 7-8, Bankr. No. 19-42890, ECF No. 19.

13 If Ms. Hoover seeks to pursue her claims against IH6 at trial, the Court may require briefing
 on the dismissal's impact on her § 362(k) claims relative to the date of IH6's notice of the
 Bankruptcy.

1 **G. QLS Did Not Willfully Violate the Automatic Stay Under the Facts of this Case.**

2 **1. The Material Facts and the Parties' Positions.**

3 ***a. Undisputed Relevant Facts.***

4 The following undisputed material facts are relevant to whether QLS willfully violated
 5 the automatic stay. QLS served as the foreclosure trustee for the Sale on September 13,
 6 2019. On September 17, 2019, before learning about the Bankruptcy, QLS delivered the
 7 Bonney Lake Property's Deed to IH6, the third-party purchaser. Bankr. No. 19-42890,
 8 Stenman Decl. Ex. D, ECF No. 20. QLS did not learn about the stay until September 24,
 9 2019. Henry Decl. Ex. L, Stenman Dep. 56:4–23, July 7, 2020, ECF No. 73; Henry Decl.
 10 Stenman Ex. 3, ECF No. 73. On that date, QLS inspected Ms. Hoover's skeletal bankruptcy
 11 petition (i.e., a petition, matrix listing only PHH as a creditor, but no schedules or bankruptcy
 12 plan) but could not verify her ownership interest in the Bonney Lake Property. Henry Decl. Ex.
 13 L, Stenman Dep. 90:1–11, ECF No. 73; Bankr. Case No. 19-42890, ECF No. 1. Additionally,
 14 between January 31, 2019, and September 18, 2019, QLS searched LexisNexis Banko 15
 15 times for the Bankruptcy using her correct social security number. Bankr. Case No. 19-42890,
 16 Stenman Decl. ¶ 9, ECF No. 20. The Bankruptcy did not appear through these searches.
 17 Bankr. Case No. 19-42890, Stenman Decl. ¶ 9, ECF No. 20.

18 Upon learning of the Bankruptcy, QLS did not immediately notify PHH or IH6. QLS did
 19 not take steps to void or rescind the Sale, take any action to obtain possession of or exert
 20 control over the Bonney Lake Property, or otherwise interfere with Ms. Hoover's interest in the
 21 Bonney Lake Property. The Court dismissed the Bankruptcy on September 26, 2019, and
 22 closed the Bankruptcy on October 2, 2019.

23 Additionally, on October 23, 2019, QLS's General Counsel, Robert McDonald, states in
 24 a timestamped email that the "third[-]party purchaser aware[sic] of bankruptcy filing and did

1 not want sale unwound. He has been advised to seek confirmation of sale in BK – not sure if
 2 he did that or not. I will contact him now for an update.” Henry Decl. QLS Ex. 1, ECF No. 73.¹⁴

3 Significantly, there was a legal dispute among Ms. Hoover, the PHH defendants, and
 4 IH6 concerning the nature of Ms. Hoover’s interest in the Bonney Lake Property and the
 5 impact of the automatic stay on the Sale. QLS took no position on these legal issues in its
 6 pleadings in this case.

7 ***b. The Parties’ MSJ Arguments on QLS’s Alleged Willful Stay Violation.***

8 Ms. Hoover seeks a declaration that QLS be held liable for a willful violation of the stay
 9 for its inaction after learning about the Bankruptcy. Specifically, Ms. Hoover argues that QLS
 10 is jointly and severally liable with the other Defendants for willfully violating the stay because it
 11 failed to notify this Court of the Sale and surplus funds, failed to notify PHH upon learning of
 12 the Bankruptcy, and failed to cooperate with Ms. Hoover to unwind the sale.¹⁵

14 QLS argues it did not willfully violate the stay because it received notice of the
 15 Bankruptcy after it delivered the Deed to IH6 on September 17, 2019. Further, QLS argues it

16 ¹⁴ This evidence cannot be accepted for determining the date IH6 received notice of the
 17 Bankruptcy. However, this Court notes there does not appear to be any dispute that QLS
 18 believed on October 23, 2019, that it had communicated with the third-party purchaser who
 19 did not want the Sale unwound, and that the third-party purchaser would be seeking a ruling
 in bankruptcy court to resolve the automatic stay issue.

20 ¹⁵ In the complaint, Ms. Hoover also argued that QLS should have voided the sale under
 21 RCW 61.24.050(2) because it received notice on the 11th day after the Sale. However, in Ms.
 22 Hoover’s response to QLS’s original motion for summary judgment and dismissal, Ms.
 23 Hoover seems to discard this argument on QLS’s liability for a willful violation. Hoover Resp.
 24 to QLS 7:17–19, ECF No. 28. Ms. Hoover states, “[t]o be clear, QLS’s liability for violating
 25 the automatic stay arises from its inaction (regardless of when it learned of the automatic
 stay). Any references to the [Washington] Deed of Trust Act are not pertinent to liability.”
 Hoover Resp. to QLS 7:17–19, ECF No. 28. Since the Debtor’s MSJ only addresses liability,
 the Court will not address the RCW 61.24.050(2) argument. This Court notes that if it held
 QLS was obligated to void a sale upon receiving notice of a bankruptcy filing despite RCW
 61.24.050(2)’s discretionary language, the Court would not find QLS’s failure to do so
 constituted a willful stay violation here because of the timing when QLS received notice and
 QLS’s inability to verify Ms. Hoover’s Bonney Lake Property interest from the Bankruptcy.

1 could not be a “judge” in resolving whether the sale should be unwound because of the legal
 2 dispute among Ms. Hoover, PHH, and IH6 over the automatic stay’s impact on the nature of
 3 Ms. Hoover’s interest in the Bonney Lake Property. For the reasons below, this Court agrees
 4 with QLS.

5 **2. Under these Facts, QLS’s Failure to Act Is Not a Willful Stay Violation.**

6 While the Ninth Circuit has determined that a "failure to act" may constitute a willful
 7 stay violation, see *Dyer*, 322 F.3d at 1192, here the undisputed facts do not establish that
 8 QLS has committed a willful stay violation. Such findings are typically made in connection with
 9 a party’s failure to remedy a stay violation it committed or where such party had a duty to take
 10 remedial action, see *supra* Discussion § E.2. It is undisputed, however, that QLS did not take
 11 any action with knowledge of the Bankruptcy. QLS conducted the Sale according to the
 12 Washington Deed of Trust Act (“DTA”) and sold the Bonney Lake Property to a third-party
 13 purchaser without knowledge of the Bankruptcy. Thus, QLS did not commit any actions in
 14 conducting the Sale that are willful stay violations. Following the Sale and before receiving
 15 notice of the Bankruptcy, QLS also delivered the Deed to the third-party purchaser. As Ms.
 16 Hoover admits, upon physical delivery of the Deed to IH6, QLS had complied with its duties
 17 under the DTA. See RCW 61.24.050(1).

18 After completing its duties under the DTA, it is further undisputed that QLS did not
 19 commit any act against Ms. Hoover or the Bonney Lake Property that violated the provisions
 20 of Section 362(a). Although this Court determined the Sale is void, it is undisputed that QLS
 21 was unaware of the Bankruptcy during the Sale and delivery of the Deed. After receiving
 22 notice of the Bankruptcy, QLS also did not commit a willful violation by failing to act after
 23 fulfilling its obligations under the DTA because it had no ability to take any further action
 24

1 (absent a court order), like rescinding the Sale. Under these facts, the Court finds that QLS
 2 did not commit any act or fail to take any action that willfully violated the automatic stay.

3 Accordingly, the Debtor's MSJ as to QLS's alleged willful stay violation is denied and
 4 QLS is entitled entry of an order declaring that its actions to date did not constitute a willful
 5 violation of the stay.

6 **III. Conclusion.**

7 The Court concludes that the Bonney Lake Property foreclosure sale to IH6 and
 8 subsequent Deed transfer and recordation violated the automatic stay and are therefore void.
 9 All Defendants shall cooperate with Ms. Hoover and her counsel to immediately take all
 10 necessary steps to undo the foreclosure sale of the Bonney Lake Property.

11 Ms. Hoover has established as a matter of law that she is entitled to partial summary
 12 judgment as to PHH's, the Trust's, and NewRez's willful stay violations. The Court makes no
 13 finding as to the specific damages owed to Ms. Hoover.

14 As described above, a genuine dispute of material fact exists concerning IH6's alleged
 15 willful violation of the automatic stay. The Debtor's MSJ and IH6's MSJ on this issue are
 16 denied.

17 Regarding QLS, QLS has established that it is entitled to summary judgment as a
 18 matter of law. QLS's MSJ is granted but QLS is not yet dismissed. This Court will address
 19 QLS's dismissal at a future status conference, see *below*. As such, the Debtor's MSJ as to
 20 QLS is denied.

21 IH6's MSJ and PHH's MSJ are denied, and IH6's and PHH's Annulment Motion is
 22 denied.

Judge Heston's Courtroom Deputy will contact the parties to schedule a status conference to discuss how best to proceed in this case in light of the Court's Memorandum Decision, including the effect of the Sale being declared void, the remaining claims against IH6, and resolution of any damage claims.

/// End of Memorandum Decision ///

Below is the Order of the Court.



Mary Jo Heston
Mary Jo Heston
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re:

SARAH HOOVER,

Debtor.

Bk. No. 19-42890

SARAH HOOVER,

Plaintiff,

Adversary No. 20-04002

v.

QUALITY LOAN SERVICE CORPORATION
OF WASHINGTON; PHH MORTGAGE
CORPORATION D/B/A PHH MORTGAGE
SERVICES; HSBC BANK USA, N.A., AS
TRUSTEE OF THE FIELDSTONE
MORTGAGE INVESTMENT TRUST,
SERIES 2006-2; NEWREZ, LLC; AND IH6
PROPERTY WASHINGTON, L.P. D/B/A
INVITATION HOMES,

Defendants.

**ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

This adversary proceeding and the pending motions for summary judgment (collectively the "MSJs") involve the impact of the automatic stay on the post-bankruptcy

**ORDER ON CROSS-MOTIONS
FOR SUMMARY JUDGMENT - 1**

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1 foreclosure sale of the Plaintiff's, Ms. Sarah Hoover ("Ms. Hoover"), family residence located
 2 at 18205 106th Street East, Bonney Lake, Washington (the "Bonney Lake Property"), and
 3 whether each defendant is liable for any violation of the automatic stay.

4 The parties to the MSJs are: (i) Plaintiff-Debtor, Ms. Hoover; (ii) Defendant, PHH
 5 Mortgage Corporation ("PHH"), the special servicer for the loan (the "Loan") secured by the
 6 Bonney Lake Property; (iii) Defendant, NewRez, LLC ("NewRez"), the general servicer of the
 7 Loan; (iv) Defendant, HSBC Bank USA, N.A (the "Trust"), as Trustee of the Fieldstone
 8 Mortgage Investment Trust, Series 2006-2 (the "Beneficiary"); (v) Defendant, Quality Loan
 9 Service Corporation of Washington ("QLS"), the foreclosure trustee; and (vi) Defendant, IH6
 10 Property Washington L.P. ("IH6"), the third-party purchaser at the foreclosure sale.

12 The following MSJs came before the Court for argument on November 20, 2020:

13 (1) Ms. Hoover's Motion for Partial Summary Judgment, ECF No. 42 ("Debtor's MSJ"),
 14 seeking a declaration that the foreclosure sale violated the automatic stay and that each
 15 defendant's conduct constitutes a willful violation of the automatic stay;¹

16 (2) QLS's Motion for Summary Judgment seeking dismissal of Ms. Hoover's complaint
 17 for willful violation of the automatic stay with prejudice and its dismissal from the adversary
 18 proceeding, ECF No. 58 ("QLS's MSJ");

19 (3) PHH's, the Trust's, and NewRez's Joint Motion for Summary Judgment seeking
 20 dismissal of Ms. Hoover's complaint for willful violation of the automatic stay with prejudice
 21 and its dismissal from this adversary proceeding, ECF No. 62 ("PHH's MSJ"); and,

23 (4) IH6's Motion for Summary Judgment seeking dismissal of Ms. Hoover's complaint
 24 for willful violation of the automatic stay with prejudice, its dismissal from this adversary

25 ¹ The Debtor's MSJ defers the issue of compensatory and punitive damages as alleged in the
 Amended Complaint to a future proceeding.

ORDER ON CROSS-MOTIONS
 FOR SUMMARY JUDGMENT - 2

1 proceeding, ECF No. 65 ("IH6's MSJ"), and its motion for annulment of the automatic stay,
 2 Bankr. No. 19-42890, ECF No. 18.²

3 After oral argument on these MSJs, the Court took these matters under advisement.
 4 The Court having considered the evidence and arguments presented, and a Memorandum
 5 Decision having been entered and incorporated herein, now, therefore, it is hereby

6 **ORDERED** that the foreclosure sale of the Bonney Lake Property is void and all
 7 Defendants shall cooperate with Ms. Hoover and her counsel to immediately take all
 8 necessary steps to undo the foreclosure sale of the Bonney Lake Property; it is further

9 **ORDERED** that the Debtor's MSJ, ECF No. 42, is granted against PHH but denied in
 10 its requested relief against QLS and IH6; it is further

11 **ORDERED** that PHH's MSJ, ECF No. 62, and IH6's MSJ, ECF No. 65, are denied; it is
 12 further

13 **ORDERED** that IH6's and PHH's Annulment Motion, Bankr. No. 19-42890, ECF Nos.
 14 18, 40, is denied; it is further

15 **ORDERED** that QLS's MSJ, ECF No. 58, is granted but, pursuant to the Memorandum
 16 Decision, QLS is not yet dismissed from this adversary proceeding; it is further

17 **ORDERED** that Judge Heston's Courtroom Deputy will contact the parties to schedule
 18 a time and date for a status conference to discuss how best to proceed in this case in light of
 19 the Court's Memorandum Decision, including the effect of the Sale being declared void, the
 20 remaining claims against IH6, and resolution of any damage claims.

21 // End of Order //

22
 23
 24
 25 ² PHH joined IH6's Motion to Annul to Automatic Stay. Bankr. No. 19-42890, ECF No. 40
 (collectively the "Annulment Motion").

CERTIFICATE OF SERVICE

On February 26, 2021, I served the foregoing document(s): DEFENDANTS' NOTICE OF APPEAL AND STATEMENT OF ELECTION, in the manner described below:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 26, 2021

Rachel M. Perez
Rachel M. Perez

Rachel M. Perez

NOTICE OF APPEAL AND STATEMENT OF ELECTION
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1 THE HONORABLE MARY JO HESTON
2 Chapter 13
3 Noted for Hearing: February 26, 2021

5 UNITED STATES BANKRUPTCY COURT
6 WESTERN DISTRICT OF WASHINGTON AT TACOMA

7
8 In re
9 SARAH HOOVER,
10 Debtor.

Chapter 13
Case No.: 19-42890-MJH
Adversary No.: 20-04002-MJH

11 SARAH HOOVER,
12 Plaintiff,
13 vs.

**DEFENDANTS PHH MORTGAGE
CORPORATION, HSBC BANK
USA, N.A., AS TRUSTEE, AND
NEW REZ, LLC'S MOTION FOR
RECONSIDERATION**

14
15 QUALITY LOAN SERVICE
16 CORPORATION OF WASHINGTON,
17 PHH MORTGAGE CORPORATION
18 D/B/A PHH MORTGAGE SERVICES,
19 HSBC BANK USA, N.A., AS
TRUSTEE OF THE FIELDSTONE
MORTGAGE INVESTMENT TRUST,
SERIES 2006-2, NEWREZ, LLC, AND
IH6 PROPERTY WASHINGTON, L.P.
D/B/A INVITATION HOMES

20 Defendants.
21

22 I. INTRODUCTION
23

24 Pursuant to Federal Rules of Civil Procedure ("FRCP") 60(b), incorporated by
25 Federal Rule of Bankruptcy Procedure ("FRBP") 9024, Defendants PHH Mortgage
26 Corporation D/B/A PHH Mortgage Services, NewRez, LLC, and HSBC Bank USA, N.A., as

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1 Trustee of the Fieldstone Mortgage Investment Trust, Series 2006-2 (collectively,
2 “Defendants”) hereby move this Court for reconsideration.

3 **II. MOTION**

4 Pursuant to FRCP 60(b), incorporated by FRBP 9024, and also pursuant to Local
5 Bankruptcy Rule 9013(h) and Washington CR 7(h), Defendants move as follows:

6 1. That, pursuant to FRCP 60(b)(1) and (6), this Court reconsider its grant of
7 summary judgment on the issue of whether Defendants “willfully” violated the automatic
8 bankruptcy stay, and instead rule that there are material issues of fact which render this issue
9 most appropriate for disposition at trial.

10 2. That, pursuant to FRCP 60(b)(1) and (6), this Court reconsider its
11 finding/ruling that Defendants’ actions showed a “complete disregard for the automatic stay
12 and Ms. Hoover’s rights by failing to stop the Sale despite receiving notice of the
13 Bankruptcy,” (ECF No. 81 at 20), and/or clarify that the finding is not a finding of intent
14 pertinent to Plaintiff’s claim for punitive damages and will not be given preclusive effect.

15 3. That, pursuant to FRCP 60(b)(1), (2), and (6), this Court reconsider its finding
16 that the balancing of equities weigh against granting Defendants’ motion to annul the
17 automatic stay under § 362(d) in order to retroactively validate the void post-bankruptcy sale.

18 4. That, pursuant to FRCP 60(b)(1) and (6), this Court reconsider its ruling that
19 Plaintiff alleged a claim for damages sufficient to allow summary judgment, given Plaintiff
20 had an affirmative duty to present *evidence* of damages, not just allege damages.

21 This motion is supported by the Court’s record in this matter, and the following points
22 and authorities.

23 **III. LEGAL STANDARD FOR MOTIONS
FOR RECONSIDERATION**

24 Defendants acknowledge that motions for reconsideration are disfavored; however,
25 they are nonetheless appropriate upon a showing of manifest error or new facts or legal
26

1 authority that could not have been presented earlier. *Aronson v. Dog Eat Dog Films, Inc.*,
 2 738 F. Supp. 2d 1104, 1118 (W.D. Wash. 2010); Wash. Civ. R. 7(h)(1). Accordingly, a
 3 motion for reconsideration is appropriate if there is a need to point out a fact or point of law
 4 that the Court failed to consider, or may have misunderstood or overlooked. *Kim v. Targa*
 5 *Real Estate Serv., Inc.*, No. C07-358P, 2007 WL 1600906, at *1 (W.D. Wash. June 1, 2007).
 6 While established jurisprudence sets a high bar for motions for reconsideration in order to
 7 preserve the resources of the Court, in truth, reconsideration of “an interlocutory order is a
 8 matter of the trial court’s ‘good sense,’ and trial judges constantly reexamine their rulings on
 9 the basis of new information or argument or just fresh thoughts.” *In re Vacation Vill, Inc.*,
 10 No. ADV.03-01003-BAM, 2006 WL 6811013, at *14 (BAP 9th Cir. Mar. 1, 2006)
 11 (paraphrasing *In re White Crane Trading Co., Inc.*, 170 B.R. 694, 700-01, n. 9 (Bankr. E.D.
 12 Cal. 1994)). This Court has the “inherent procedural power to reconsider, rescind, or modify
 13 an interlocutory order for cause seen by it to be sufficient” at any time. *City of Los Angeles,*
 14 *Harbor Div. v. Santa Monica BayKeeper*, 254 F.3d 882, 885-87 (9th Cir. 2001).

15 Here, a trial in this matter appears imminent. Moreover, some of the rulings discussed
 16 below determined issues about which there was conflicting evidence. In such a case, good
 17 cause supports reconsideration as to whether the evidence should be more thoroughly fleshed
 18 out at trial.

19 **III. POINTS AND AUTHORITIES**

20

21 **A. Defendants’ Motion to Reconsider Grant of Summary Judgment on the**
 22 **Issue of Whether Defendants “Willfully” Violated the Automatic**
 23 **Bankruptcy Stay**

24 Defendants request reconsideration of this Court’s ruling granting summary judgment
 25 on the issue of whether Defendants committed a “willful” violation of the automatic
 26 bankruptcy stay. The ruling appears to be manifest error because (1) it failed to consider

1 arguments raised by Defendants establishing why they did not have notice of a pertinent
 2 bankruptcy filing, and (2) appears to have viewed disputed evidence in the best light for
 3 Plaintiff, the moving party, rather than viewing the evidence in the best light for Defendants,
 4 as required, and deferring resolution of disputed issues of fact to trial. *Landis v. Washington*
 5 *State Major League Baseball Stadium Pub. Facilities Dist.*, 403 F. Supp. 3d 907, 914 (W.D.
 6 Wash. 2019) (noting conflicting evidence on summary judgment is viewed in the best light
 7 for the non-moving party); *Forsyth v. City of Buena Park*, 691 F. App'x 363, 365 (9th Cir.
 8 2017) (noting where there is conflicting evidence, claims “should be resolved at trial, not at
 9 summary judgment) (*citing Perez v. Curcio*, 841 F.2d 255, 258 (9th Cir. 1988)).

10 1. Defendants cannot be considered to have “willfully” violated the stay given they
 11 had no notice of any pertinent bankruptcy due to Ms. Hoover’s failure to take title,
complete assumption paperwork, or become a successor-in-interest

12 This Court rejected Defendants’ argument that Ms. Hoover’s failure to take title to the
 13 Property, failure to assume the Loan, and failure to complete the necessary paperwork to be
 14 designated a confirmed successor-in-interest meant that the Property was not protected under
 15 the automatic bankruptcy stay. (Memorandum, ECF No., 81 at 14-17.) However, these issues
 16 were also relevant to whether Defendants had enough information to know there was a
 17 pertinent bankruptcy filing, such that Defendants’ violation of the stay was “willful.” For
 18 example, as explained in Defendants’ Motion for Summary Judgment, if Ms. Hoover had ever
 19 provided adequate notice and confirmation of her interest in the Property, or completed the
 20 successor-in-interest and assumption documents sent to her,¹ PHH would have understood
 21

22 ¹ Defendants presented sworn evidence that PHH had sent Ms. Hoover the required documents to
 23 become successor-in-interest or to assume the Loan multiple times, beginning nine months
 24 before the foreclosure sale (Prudent Dec., ¶¶ 17-18, ECF No. 64), and she did not return
 25 complete paperwork needed to become a successor-in-interest until three months after the sale.
 26 (*Id.* at ¶ 27.) Ms. Hoover, in turn, presented evidence that she tried multiple times from May
 2019 through July 2019 to get the appropriate documents to Ocwen or PHH, but had difficulties.
 (Hoover Dec., ¶¶ 20-27, 35, ECF No. 43.) However, summary judgment proceedings are not the
 appropriate vehicle to weigh the credibility of conflicting evidence; rather, the evidence should
 have been viewed in the best light for Defendants as the non-moving party. *Landis v.*

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1 her interest and postponed the sale. (Defs' Motion, ECF No. 62, at 10-11.)² Defendants also
 2 explained that Ms. Hoover refused to provide evidence of a recorded deed transferring the
 3 property from the deceased Mr. Suleiman to the Ali Suleiman Trust, or to Ms. Hoover, and
 4 she also did not timely provide Defendants a copy of the full Suleiman Trust document.
 5 (Defs' MSJ, ECF No. 62, at 7-8 (citing Prudent Dec., ¶¶ 18-19, Ex. 9; Moore Dec., Ex. H,
 6 Hoover Dep. Tr. at 70:21-71:4).) This Court's ruling that "irrelevant technicalities with title"
 7 did not prevent the Property from becoming a part of the bankruptcy estate overlooks the fact
 8 that these technicalities were also highly pertinent to the issue of Defendants' notice of a
 9 pertinent bankruptcy, which was required to find Defendants conduct "willful." *Pinkstaff v.*
 10 *United States*, 974 F.2d 113, 115 (9th Cir.1992).

11 Here, if Ms. Hoover had presented a copy of a deed transferring title to her as
 12 requested, Defendants would have had clear notice of her interest in the Property and the
 13 existence of a pertinent bankruptcy. Moreover, in general, the transfer of title through a
 14 recorded document is the *primary* method through which parties have actual or constructive
 15 notice of the interest of others. *See, e.g., Miller v. Smith*, 119 Wash. 163, 167–68, 205 P. 386,
 16 388 (1922) (noting failure to record interest meant third parties had no notice of it). But
 17 because Ms. Hoover was not in title, any routine title report obtained prior to foreclosure
 18 would not have disclosed her interest, and Defendants could not have known and would not
 19 have had any way to verify that interest. Indeed, IH6 researched the condition of the title
 20 prior to the sale and there were no public records that disclosed Ms. Hoover's claimed interest.
 21 (Bankr. No. 19-42890, Lappano Decl. at ¶ 4, ECF No. 19.) QLS, on whom Defendants relied
 22 to properly conduct the sale, also attempted to verify Ms. Hoover's interest in the Property,
 23

24 *Washington State Major League Baseball Stadium Pub. Facilities Dist.*, 403 F. Supp. 3d 907,
 914 (W.D. Wash. 2019)

25 ² *See also* Defendants' Response to Plaintiff's Motion for Partial Summary Judgment, ECF No.
 68, at 8-9, wherein Defendants argue that they had inadequate information to know of Ms.
 26 Hoover's interest in the Property.

1 and was unable to do so. (Bankr. No. 19-42890, Stenman Decl. ¶ 2, ECF No. 20; Henry Decl.
 2 Ex. L, Stenman Dep. 90:1-11, July 7, 2020, ECF No. 73.)

3 Here, one can readily imagine that a foreclosing lender routinely receives calls with
 4 explanations and inquiries aimed at stopping a foreclosure sale. This Circuit's precedent
 5 concerning willful violations of the automatic stay does not envision that parties will halt
 6 collection efforts as to all of their financial interests upon notice of an unknown third-party's
 7 bankruptcy proceeding, where the third-party holds no known or verifiable interest. It would
 8 be unreasonable to expect a creditor to stop foreclosure activity against a borrower on the
 9 basis of a phone call from a non-borrower, non-owner, who reports that she is filing for
 10 bankruptcy, when there is no basis to believe the person has an ownership interest in the
 11 property being foreclosed, or is obliged as a debtor. Yet, this is exactly what this Court's
 12 ruling requires of creditors.

13 Further, this Court found that all parties agreed in the proceedings before the Court
 14 that Ms. Hoover had some *interest* in the Property (Memorandum at 15, ECF 81), but failed
 15 to appreciate that there was no evidence the Defendants were aware of that interest at the
 16 time of the foreclosure sale.³ Compounding this lack of notice to Defendants, Ms. Hoover's
 17 last minute bankruptcy filing (made four months after she received notice of an impending
 18 foreclosure sale), provided little opportunity for the Defendants to investigate her claim that
 19 she had an interest in the Property, and there is no evidence that she provided Defendants
 20 proof of any interest.

21 The Court's ruling is particularly concerning in light of the fact that the only evidence
 22 before this Court of PHH's knowledge that Ms. Hoover filed for bankruptcy is the evidence
 23 of a (1) one-page facsimile to PHH one day before the sale, by a party (Elite Legal Network)
 24

25 ³ For example, Ms. Hoover was asked during her deposition when she first provided the loan
 26 servicer with a full copy of the terms of the Suleiman Trust, and answered "I don't know."
 (Moore Dec., Ex. H, Hoover Dep. Tr., at 70:21-71:4, ECF 63.)

1 who was not authorized to speak on the account, concerning Ms. Hoover, who had no known
 2 interest in the Property (Prudent Dec., ¶ 24, ECF No. 64), and (2) at most, two phone calls
 3 one day before the sale, which PHH could not completely respond to because of Ms.
 4 Hoover's failure to complete the loan assumption or successor in interest documents.
 5 (Prudent Dec., ¶ 24, 25, ECF No. 64.) Ms. Hoover's version of this limited notice provided
 6 to PHH is relatively aligned with Mr. Prudent's declaration. (See Hoover Dec., ¶¶ 43-45,
 7 ECF No. 43.) Importantly, the testimony from Defendants' representative, Mr. Prudent –
 8 which is not countered by any evidence from Plaintiff – is that Defendants believed that Ms.
 9 Hoover's bankruptcy did not affect the Loan, which was not in her name as a borrower,
 10 successor-in-interest, or as an assuming party. (Prudent Dec., ¶ 25, ECF No. 64.)⁴

11 Admittedly, Ninth Circuit precedent indicates that the “willfulness” standard for
 12 violations of the automatic stay does not require specific intent, but only knowledge of the
 13 bankruptcy and intentional conduct. *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003).
 14 However, interpreting this standard as requiring a lender to stop foreclosure efforts on the
 15 mere report of a bankruptcy filing by one who has no known or recorded interest in the
 16 property is taking an extreme view of the willfulness standard, and finding knowledge where
 17 there is none. *See, e.g., Taggart v. Lorenzen*, 139 S. Ct. 1795, 1804, 204 L. Ed. 2d 129
 18 (2019) (“We note that the automatic stay provision uses the word “willful,” a word the law
 19 typically does not associate with strict liability”) Further, in recent years a shift has
 20 occurred in the Ninth Circuit, such that several courts in this jurisdiction have now held that
 21 a party’s “subjective good faith belief” that a bankruptcy stay is inapplicable “insulates the
 22 entity from liability for sanctions” *See, e.g., In re Bradford*, No. 18-25405-B-7, 2018

23
 24 ⁴ Further, it was undisputed in the proceedings below that if Ms. Hoover had completed the
 25 information earlier and submitted it to Ocwen or PHH before September 9, 2019, then when she
 26 called on September 12, 2019, she would have appeared as a successor-in-interest and PHH
 would have requested that the sale be postponed. (*Id.* at ¶ 28.) The only reason that did not
 occur, was because Ms. Hoover failed to fill out the required paperwork. (*Id.*)

1 WL 6422858, at *5 (Bankr. E.D. Cal. Dec. 4, 2018). *See also In re Freeland*, No. BR 19-
 2 32309-PCM7, 2020 WL 4726580, at *2 (Bankr. D. Or. Aug. 12, 2020) (noting “some
 3 question whether the traditional standard [for willfulness] is still applicable, or if the standard
 4 may be shifting such that a finding of willfulness is precluded where a creditor had an
 5 objectively reasonable basis for believing it was not violating the stay); *In re Moo Jeong*, No.
 6 6:19-BK-10728-WJ, 2020 WL 1277575, at *4 (BAP 9th Cir. Mar. 16, 2020) (noting
 7 assumption that contempt standard applied to a discharge violation – requiring no reasonably
 8 objective basis for conduct – also applies in the context of an automatic stay violation.)
 9 Here, Defendants had an objectively reasonable basis for believing they never violated the
 10 automatic stay.

11 Relatedly, a long-recognized exception to the traditional “willfulness” standard has
 12 been recognized where the law regarding the alleged violation is sufficiently unsettled. *See*
 13 *In re Univ. Med. Ctr.*, 973 F.2d 1065, 1088-89 (3d Cir. 1992). *See also Stancil v. Bradley*
 14 *Investments, LLC*, 487 B.R. 331, 343-344 (Bankr. D.C. 2013) (for an alleged violation of the
 15 automatic stay “when the law is sufficiently unsettled, willful violation of the statutory
 16 command is absent, and damages are not recoverable, because the offending party has not
 17 acted in violation of a command of which it had fair notice.”); *In re Reinhardt*, 209 B.R. 183,
 18 185-88 (Bankr. S.D.N.Y. 1997) (violation of stay was not willful where counsel acted in
 19 climate of confusing case law precedent); *In re Zurich*, 88 B.R. 721, 724-26 (Bankr. W.D.
 20 Pa. 1988) (violation of stay was not willful where there were no cases dealing with relevant
 21 section of Bankruptcy Code). Here, where substantial grounds existed for finding that the
 22 bankruptcy stay was inapplicable, a finding that any violation was “willful” was not
 23 supported.

24 In sum, in light of the conflicting evidence and lack of clear notice to Defendants of a
 25 pertinent bankruptcy filing, and the fact that any notice Defendants received gave them no
 26 time to investigate, among other circumstances, Defendants request this Court reconsider its

1 grant of summary judgment on the issue of whether Defendants knowingly violated the
 2 automatic bankruptcy stay, and instead rule that there are material issues of fact which render
 3 this issue most appropriate for disposition at trial.

4 **B. Defendants' Motion to Reconsider this Court's ruling that Defendants'
 5 actions showed a "complete disregard for the automatic stay and Ms.
 6 Hoover's rights"**

7 This Court also opined in its ruling that Defendants' conduct showed a "complete
 8 disregard for the automatic stay and Ms. Hoover's rights . . ." (ECF No. 81 at 20.)
 9 Defendants disagree; but, more importantly, the ruling comes appreciably close to indicating
 10 this Court has found conduct culpable of allowing punitive damages, and whether the court
 11 intended this is unclear. *In re Snowden*, 769 F.3d 651, 655–56 (9th Cir. 2014) (discussing
 12 court ruling finding punitive damages available for violation of bankruptcy stay due to
 13 party's "reckless disregard for the rights of customers who file for bankruptcy relief.") To
 14 the extent this Court intended to weigh in on that issue, Defendants request reconsideration
 15 in light of the fact that punitive damages was not raised by Plaintiff in her Motion for
 16 Summary Judgment, and Defendants therefore had no opportunity to make a record on this
 17 issue. Plaintiff's MSJ, at 3, ECF No. 42.)

18 **C. Defendants' Motion to Reconsider this Court's ruling that the balancing of
 19 equities weigh against granting Defendants' motion to annul the automatic
 20 stay under § 362(d)**

21 Further, Defendants request reconsideration on this Court's ruling that a balancing of
 22 the interests weighed in favor of denying Defendants' Annulment Motion. The ruling
 23 appears in large part premised on this Court's concern that annulling the stay would result in
 24 the ouster of Ms. Hoover and family members from the Property.⁵ Here, the equities appear

25
 26 ⁵ *But see In re Aki Oya*, No. BAP SC-19-1095-BKUL, 2019 WL 5390007, at *8 (B.A.P. 9th Cir. Oct. 18, 2019), *appeal dismissed sub nom. In re Oya*, No. 19-60060, 2019 WL 7946347

1 decidedly *off*-balance, where Ms. Hoover actively concealed her interest in the Property by
 2 leaving title in the name of Mr. Suleiman, refused to provide a grant deed to her loan servicer
 3 to establish her interest in the Property, failed to timely provide assumption or successor-in-
 4 interest documents that would have indicated to the servicer that she had an interest in the
 5 Property, delayed four months before filing for bankruptcy, and notified PHH the day before
 6 the bankruptcy sale, apparently expecting it to scramble to ascertain her interest in the
 7 Property, which was not ascertainable. Because of Ms. Hoover's default and many other
 8 failures, many of which were completely within her control, an innocent purchaser with no
 9 notice bought the Property at the sale, and Ms. Hoover now seeks an astronomical damages,
 10 and has recently served a new round of written discovery and deposition notices seeking
 11 production of all documents regarding the past five years' income statements, cash flow, net
 12 pretax profits, and also net worth for Defendants. Allowing Plaintiff to take advantage of the
 13 automatic bankruptcy stay in this manner, when she filed for the sole purpose of stopping the
 14 sale, did not even go through with the bankruptcy, and had far more notice than Defendants –
 15 but took less action – is, itself, inequitable.

16 **D. Defendants' Motion to Reconsider whether Plaintiff presented evidence of**
 17 **Damages**

18 In the proceedings below, this Court's Memorandum noted:

19 "PHH asserts that Ms. Hoover has not alleged or shown any actual damages
 20 and therefore Ms. Hoover has not made a *prima facie* claim for willful
 21 violation of the automatic stay. PHH's MSJ 15, ECF No. 62. This argument
 22 is unfounded. *See* Hoover Amended Complaint ¶¶ 68-69, ECF No. 7 (alleging
 23 actual damages and emotional distress)."

24 (ECF No. 81 at 3, n.2) The ruling appears to be an oversight, but constitutes manifest error.
 25 In their motion for summary judgment, Defendants argued that Ms. Hoover could not assert a

26 (9th Cir. Dec. 24, 2019) (weighing Debtor's five years rent free in the Property against
 Debtor and in favor of annulment).

1 claim for violation of the automatic bankruptcy stay because she could not establish that she
 2 had been damaged by the violation. (See Def.'s MSJ, ECF No. 62 at 15.) Defendants further
 3 contended that Ms. Hoover was required to submit evidence sufficient to raise a general issue
 4 of material fact on this issue, and that she had not done so in her Motion for Summary
 5 Judgment. (*Id.*) They also contended that Ms. Hoover could not do so, because she could
 6 not show that PHH or the Trust might not have been granted relief from stay had it asked. *In*
 7 *re Fernandez*, 227 B.R. 174, 180-81 (9th Cir. BAP 1998). Ms. Hoover failed to present any
 8 evidence in response to the argument. Accordingly, this Court's ruling on Defendants'
 9 damages argument was in error, because it allowed Ms. Hoover to rely on allegations in her
 10 Complaint, when Ms. Hoover was required to come forward with affirmative evidence of her
 11 damages. *See, e.g., McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 808-09 (9th Cir.1988).

IV. CONCLUSION

13 For the reasons set forth above, Defendants requests that this Court reconsider its prior
 14 decision in this matter.

15 DATED: March 3, 2021

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CERTIFICATE OF SERVICE

On March 3, 2021, I served the foregoing document(s): DEFENDANTS PHH MORTGAGE CORPORATION, HSBC BANK USA, N.A., AS TRUSTEE, AND NEW REZ, LLC'S MOTION FOR RECONSIDERATION, in the manner described below:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 3, 2021

Rachel M. Perez

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